

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10943-mew

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5 In the Matter of:

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7 VOYAGER DIGITAL HOLDINGS, INC.,

8

9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 August 4, 2022

17 11:02 AM

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21 B E F O R E :

22 HON MICHAEL E. WILES

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: UNKNOWN

1 HEARING re Final hearing RE: motion authorizing the Debtors
2 to pay their obligations under prepetition insurance
3 policies, continue to pay certain brokerage fees, renew,
4 supplement, modify, or purchase insurance coverage, and
5 maintain their surety bond program and granting related
6 relief

7
8 HEARING re Application to employ Kirkland & Ellis LLP and
9 Kirkland & Ellis International LLP as attorneys for the
10 debtors and debtors in possession effective as of July 5,
11 2022

12
13 HEARING re Application to employ Moelis & Company LLC as
14 investment banker, capital markets advisor, and financial
15 advisor effective as of the petition date

16
17 HEARING re Application authorizing employment and retention
18 Quinn Emanuel Urquhart & Sullivan LLP as special counsel to
19 Voyager Digital Holdings, Inc. effective July 13, 2022

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21 HEARING re Application authorizing the employment and
22 retention of Stretto, Inc. as administrative advisor to the
23 Debtors effective as of the petition date

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1 HEARING re Final hearing RE: motion authorizing the payment
2 of certain taxes and fees and granting related relief
3 Final hearing RE: motion authorizing the Debtors to pay
4 prepetition employee wages, salaries, other compensation,
5 and reimbursable expenses and continue employee benefits
6 programs and granting related relief

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8 HEARING re Final hearing RE: motion approving notification
9 and hearing procedures for certain transfers of and
10 declarations of worthlessness with respect to common stock
11 and granting related relief

12
13 HEARING re Final hearing RE: motion authorizing the Debtors
14 to continue to operate their cash management system, honor
15 certain prepetition obligations related thereto, maintain
16 existing business forms, and continue to perform
17 intercompany transactions, granting superpriority
18 administrative expense status to post-petition intercompany
19 balances, and granting related relief

20
21 HEARING re Final hearing RE: motion establishing certain
22 notice, case management, and administrative procedures and
23 granting related relief

24
25

1 HEARING re Motion establishing procedures for interim
2 compensation and reimbursement of expenses for retained
3 professionals and granting related relief

4

5 HEARING re Motion authorizing retention and compensation of
6 professionals utilized in the ordinary course of business

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8 HEARING re Motion authorizing the Debtors to honor
9 withdrawals from the MC FBO accounts, liquidate
10 Cryptocurrency from customer accounts with a negative
11 balance, sweep cash held in third-party exchanges, conduct
12 ordinary course reconciliation of customer accounts and
13 continue stalking cryptocurrency, and granting related
14 relief Limited objection filed

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16 HEARING re Motion approving the bidding procedures and
17 related dates and deadlines, scheduling hearings and
18 objection deadlines with respect to the Debtors sale,
19 disclosure statement and plan confirmation, and granting
20 related relief Limited objections filed

21

22 HEARING re Motion setting bar dates for submitting proofs of
23 claim, approving procedures for submitting proofs of claim
24 and approving notice thereof

25 ***ORDER SIGNED AND ENTERED ON 8/3/2022 AS DOCUMENT 218

1 REGARDING ABOVE MOTION***

2 ***NO APPEARANCE NECESSARY***

3
4 HEARING re Motion approving the share purchase agreement by
5 and among Voyager European Holdings ApS and Ascension ApS
6 and related documents, authorizing the private sale of
7 equity interests in coinify ApS, and granting related relief

8 ***ADJOURNED TO A DATE TO BE DETERMINED***

9
10 HEARING re Application to employ Berkeley Research Group,
11 LLC as financial advisor effective as of July 5, 2022

12 Adjourned Reset for 08/16/2022 at 11:00 am

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 KIRKLAND & ELLIS LLP

4 Attorneys for the Debtor

5 601 Lexington Avenue

6 New York, NY 10022

7

8 BY: JOSHUA SUSSBERG (TELEPHONICALLY)

9 CHRISTOPHER MARCUS (TELEPHONICALLY)

10 CHRISTINE OKIKE (TELEPHONICALLY)

11 ALLYSON SMITH (TELEPHONICALLY)

12 NICHOLAS ADZIMA (TELEPHONICALLY)

13

14 SULLIVAN & CROMWELL LLP

15 Attorneys for Alameda Ventures

16 125 Broad Street

17 New York, NY, 10004

18

19 BY: ANDREW DIETDERICH (TELEPHONICALLY)

20

21

22

23

24

25

1 MCDERMOTT WILL & EMERY LLP

2 Attorneys for the Official Committee of Unsecured
3 Creditors

4 340 Madison Avenue

5 New York, NY 10173

6

7 BY: DARREN AZMAN (TELEPHONICALLY)

8

9 MCDERMOTT WILL & EMERY LLP

10 Attorneys for the Official Committee of Unsecured
11 Creditors

12 2501 N. Harwood Street

13 Dallas, TX, 75201

14

15 BY: CHARLES GIBBS (TELEPHONICALLY)

16

17 UNITED STATES DEPARTMENT OF JUSTICE

18 Attorneys for the U.S. Trustee

19 201 Varick Street, Suite 1006

20 New York, NY 10014

21

22 BY: RICHARD MORRISSEY (TELEPHONICALLY)

23

24

25

1 LISA DAGNOLI (TELEPHONICALLY)

2 Pro Se Creditor

3 256 Millbrook Drive

4 East Longmeadow, MA, 01028

5

6 CORDEARO DADSON (TELEPHONICALLY)

7 Pro Se Creditor

8 15521 SW 1006 Avenue

9 Miami, FL 33157

10

11 SINGER LAW GROUP

12 Attorneys for Matthew Levitt

13 222 Broadway, 19th Floor

14 New York, NY, 10038

15

16 BY: JEB SINGER (TELEPHONICALLY)

17

18 WACHTELL, LIPTON, ROSEN & KATZ

19 Attorneys for Metropolitan Commercial Bank

20 51 West 52nd Street

21 New York, NY, 10019

22

23 BY: AMY WOLF (TELEPHONICALLY)

24 ROSEMARY SPAZIANI (TELEPHONICALLY)

25

1 AIRD & BERLIS

2 Attorneys for the Canadian BDL Entity

3 181 Bay Street

4 Toronto, m5m 3

5

6 BY: STEVEN GRAFF (TELEPHONICALLY)

7

8 CHRISTOPHER ROUSE (TELEPHONICALLY)

9 Pro Se Creditor

10 7425 Democracy Blvd.

11 Bethesda, MD 20817

12

13 ALSO PRESENT TELEPHONICALLY:

14 GINGER LITTLE

15 TRACY HENDERSHOTT

16 PATRICK HOLOHAN

17 LETICIA SANCHEZ

18 ALYONA FOERTSCH

19 JEFF STAPLETON

20 ROBERT BURNS

21 ANDREW BUTLER

22 LYSBETH GEORGE

23 BENJAMIN NICKERSON

24 BRIAN GLUECKSTEIN

25 GIORGIO BOVENZI

1 MEGAN MALONEY
2 VINCE SULLIVAN
3 JEONGHOON HA
4 NEGISA BALLUKU
5 BRAD AXELROD
6 RICHARD BAUDOUIN
7 NATHANIEL DUPREE
8 CHRISTOPHER STABLE
9 DAN LAWRENCE
10 SOMA BISWAS
11 JOE COLVIN
12 CHRISTOPHER GASTELU
13 BRYANT OBERG
14 LISA DAGNOLI
15 JASON DIBATTISTA
16 ANDREW GLANTZ
17 ROBERT JORDAN
18 MIKE LEGGE
19 CAROLINE SALLS
20 RICKY ANGIOLINI
21 JOY HU
22 JUEWETT BOSTICK
23 JOSEPH BRANDT
24 PHILIP BRENDDEL
25 ELLE CHOI

1 ROBERT HONEYWELL
2 GAVIN MCKELVEY
3 ANDREW SCHIFF
4 CHRIS UPDIKE
5 SHAIK BABA
6 PAUL HAGE
7 JEREMY HILL
8 JOSEPH BARSALONA
9 ERIC FRIEL
10 ANTHONY GREENE
11 VLADIMIR JELISAVCIC
12 JEFFREY KALPLAN
13 DAVID KOZLOWSKI
14 ERIC KURTZMAN
15 MATTHEW MASARO
16 MATT MICHELI
17 CRAIG RASILE
18 BRIAN ROSEN
19 MICHAEL SAVETSKY
20 KATHERINE SCHERLING
21 DOUGLAS TABACHNIK
22 JEREMIAH VANDERMARK
23 JARED DERMONT
24 STEPHEN EHRLICH
25 SUSAN GOLDEN

1 RICHARD HOWELL
2 SUSHEEL KIRPALANI
3 MATTHEW MCCLINTOCK
4 MATT MURPHY
5 MICHAEL SLADE
6 THOMAS BRAZIEL
7 BENJAMIN BELLER
8 JOHN DODD
9 GRACE LAMPERT
10 CARRIE LORANGER
11 MARTIN ALLOCATI
12 CHESTER BA
13 JASON BINFORD
14 ROMA DESAI
15 MICHAEL DUNN
16 DAVID HOLLERITH
17 LAYLA MILLIGAN
18 JASON ROSELL
19 ABIGAIL RYAN
20 JEAN PAUL
21 TIMOTHY REILLY
22 ZACHARY RUSSELL
23 DENISE KALOUDIS
24 IGNACIO GUERRERO
25 AISLINN KEELY

1 STEVEN GRAFF
2 YUN FANG
3 GERARDO PEDRAZA
4 ZACHARY TOWLE
5 HUGH BELLAMY
6 MARK BRUH
7 ELIZABETH WAGENBACH
8 ANDREW VELEZ-RIVERA
9 RICHARD MORRISSEY
10 ERICA CLARK
11 YATES FRENCH
12 MARK FRANKEL
13 MICHAEL CORDASCO
14 JOSEPH EVANS
15 CHARLES GIBBS
16 DANIEL SIMON
17 GRAYSON
18 GREGG STEINMAN
19 CHARLIE SHREM

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1 P R O C E E D I N G S

2 CLERK: Before we begin, there are two
3 announcements. Please be advised that you are strictly
4 prohibited from recording, reproducing or rebroadcasting any
5 part of this hearing in whole or in part in any fashion. A
6 violation of this Court's order could be deemed a contempt
7 of Court.

8 Please note that with respect to each motion, the
9 presentation should not be interrupted. At the conclusion
10 of each motion's presentation, the Court will entertain any
11 additional comments or objections. Thank you.

12 THE COURT: Good morning, everybody. Are the
13 parties ready to proceed in the Voyager matter?

14 MR. SUSSBERG: Yes, Your Honor. It's Joshua
15 Sussberg from Kirkland and Ellis on behalf of Voyager. Hope
16 you're doing well.

17 THE COURT: Thank you.

18 MR. SUSSBERG: Thank you. I know the Court has
19 lots of questions, and we are going to endeavor to answer
20 all of them today. But before we do, I wanted to note that
21 while it's only been 26 days since our first day hearing,
22 I'm not sure I've ever seen the volume of activity that has
23 occurred in a case over the last several weeks.

24 And I thought it would make sense to provide Your
25 Honor and the community with a brief update on the overall

1 state of play before diving into the two contested matters,
2 and then moving through the rest of the agenda, if that's
3 okay with the Court?

4 THE COURT: That's fine.

5 MR. SUSSBERG: Thank you, Your Honor. We posted a
6 presentation to the noticing agent's website, Stretto, that
7 I'm going to walk through. And I believe we provided a copy
8 to Your Honor. Quickly, on Slide 2, Your Honor, I wanted to
9 note that, as is obvious, that the Committee was formed.
10 And that was formed on July 19th.

11 And that Committee has been working incredibly
12 hard with us to get up to speed as quickly as possible. Now
13 this is not your typical UCC, although the acronym is still
14 applicable. This is purely a customer committee. All seven
15 members are customers with crypto and coin holdings on the
16 Voyager platform.

17 The Committee's represented by McDermott Will &
18 Emery led by Mr. Azman and FTI Consulting led by Mr. Simms.
19 I think we've taken a very different approach than is
20 typical with a Committee, because this case is all about the
21 customers. And this customer Committee is riding shotgun
22 with us, and we intend to be shoulder to shoulder
23 throughout.

24 It's been incredibly collaborative. We appreciate
25 the efforts of the Committee members and its professionals.

1 And I am pleased to report that we resolved all potential
2 objections from the Committee today, and even have a
3 statement filed by the Committee in support of important
4 relief that we'll get to shortly.

5 I also wanted to mention, Your Honor, and I'm sure
6 Mr. Azman will comment on this, we've been negotiating a
7 potential support for the process agreement with the
8 Committee. And we've discussed and are exploring ways in
9 which we can get holdings and distributions back to holders
10 as quickly as possible, maybe even before a planned process.

11 Now in 5.3, Your Honor, I want to talk about this,
12 because there's a lot of misinformation in the media
13 regarding the rebound in crypto and who gets the value
14 associated with that rebound. And as you can see, over the
15 course of just four weeks, the price of Bitcoin is up 14
16 percent, and the price of Ethereum is up 42 percent.

17 And if you remember the story I told back on the
18 first day about the two pizzas that Mr. Hanyecz bought in
19 2010, back for 10,000 Bitcoins and \$40, those pizzas today
20 would be about \$220 million. But I want to be clear about
21 something, and I think this is super important, and but
22 customer should hear this.

23 The plan we filed and the transactions we are
24 negotiating seek to put all the value associated with the
25 rise in crypto over the last few weeks right back in our

1 customers' pockets. The company is not seeking to dollarize
2 claims on a petition date and benefit in any way from this
3 rebound.

4 And if we could avoid a liquidation and litigation
5 of all the interesting, but in our view, and as I said on
6 the first day, irrelevant legal issues of first impression,
7 that is exactly what we're going to be able to do. The
8 rampant speculation that the advisors to this company are
9 trying to drag these cases out to earn fees is completely
10 false.

11 Now on Slide 4, Your Honor, and we're going to
12 cover this, and Mr. Marcus will walk the Court through as
13 part of the bidding procedure's presentation, we are seeking
14 approval of bidding procedures to formalize our process. It
15 is a process led by Moelis, and it's working as we had
16 designed it.

17 We have multiple indications of interest, and
18 expect several more, all geared up and tied to an auction
19 we're seeking to set for August 29th. We have some parties
20 publicly saying we're going too slow. We have other parties
21 publicly saying we're going too fast.

22 And in my experience that means we're doing
23 something right. Importantly, the company has \$97 million
24 of cash, \$27 million of USDC and \$19 million of crypto today
25 as we sit here. The faster we move, the more of that value

1 goes to the customers, not lawyers.

2 THE COURT: Would you remind me, what are the
3 Creditor claims that you know of apart from the customer
4 claims?

5 MR. SUSSBERG: It's a very small universe, Your
6 Honor, of vendors that are mixed in. I don't think it is
7 more than a couple million dollars, but I can get you the
8 exact figure.

9 THE COURT: Okay, go ahead.

10 MR. SUSSBERG: Slide 5, Your Honor, and this was
11 on the docket. And I just wanted to mention this because
12 this was a new one for me. A company called KaJ Labs
13 reached out to the company and asked the company to say on
14 social media that we Voyager were in discussions with them.

15 And if we did that, KaJ would send us a letter of
16 intent. We of course advised the company against this and
17 encouraged KaJ to sign an NDA. They did not. KaJ then
18 announced via press release on July 21 that it rescinded its
19 LOI because of disagreements with the company.

20 But it's impossible to rescind something that was
21 never provided. And it's impossible to disagree with
22 someone that you've never spoken to. It's unclear what KaJ
23 was up to, but we've publicly reserved our rights and will
24 pursue any and all claims or causes of action to the extent
25 it becomes necessary.

1 On Slide 6, Your Honor, this was another new one
2 for me. This was our response to FTX and Alameda. And we
3 spoke a bit about the relationship with FTX and Alameda at
4 the first day hearing. But just so Your Honor has context
5 and everyone understands, FTX is a cryptocurrency exchange
6 that averages \$10 billion of daily trading value and has
7 over one million users.

8 Alameda is a quantitative trading firm. Both were
9 founded by Sam Bankman-Fried, who is a 30-year-old MIT grad.
10 Alameda and FTX are represented by Mr. Dietderich, who I
11 know the Court is familiar with, and who I expect --
12 respect, admire and consider a friend.

13 And as I mentioned to the Court previously,
14 Alameda and FTX wear multiple hats here. They are a
15 borrower and owe the company \$377 million. They are a
16 lender. We've borrowed and owe \$75 million to Alameda,
17 which we borrowed in June to help stabilize the platform.

18 And Alameda and FTX is also the largest equity
19 holder, holding approximately 10 percent. Now one day after
20 we filed our proposed bidding procedures, Alameda and FTX
21 put out a press release with a proposal to short circuit the
22 process that we were seeking to approve and seek expedited
23 approval of a deal to provide customers with liquidity and
24 transfer those customers to FTX's platform.

25 I do not intend to get into a food fight here

1 today. And the back and forth with FTX and Mr. Dietderich
2 over the last couple of weeks is water under the bridge to a
3 certain extent. What is relevant, however, is that
4 everyone, including other bidders who are actively
5 participating and some who are hesitant to participate,
6 everyone needs to understand and hear that FTX does not have
7 a leg up. And that is why we responded the way we did.

8 Our job, our sole focus, Your Honor, is to
9 maximize value for our customers, and that's exactly what
10 we're planning to do. And we don't intend to let anyone try
11 to infiltrate that process. And the proof has been in the
12 pudding.

13 Of the proposals we've received to date, FTX's is
14 actually the lowest, but we hope that improves through
15 engagement over the coming days and weeks. And we are going
16 to work with FTX and continue to work with FTX. And I
17 understand that they intend to participate in the process we
18 seek to have approved by Your Honor today. And Mr. Marcus
19 will report on the resolution we reached on their objection.

20 And we absolutely welcome that. And at the end of
21 the day, if FTX's proposal turns out to be the highest and
22 best, they will win. But the games and the publicity
23 campaign should stop. I watched Mr. Bankman-Fried's
24 interview on CNBC earlier this week on Tuesday.

25 And the major focus of that discussion was his bid

1 for Voyager and the status of that bid. And Mr. Bankman-
2 Fried said, and I quote, "You know, a lot of the bids that
3 we're hearing people thinking about were giving you 10, 20,
4 30 cents on the dollar back to customers." And I just want
5 to be clear, and everyone should hear it, that is untrue.

6 No bid we have received is anywhere close to that.
7 Parties in our process have expressly made concerns aware to
8 us that FTX has a leg up and is working behind the scenes to
9 force its way with the Customer Committee or the company.
10 And some parties have even indicated they may be unwilling
11 to bid because of this.

12 Again, I want to assure all parties, the Court and
13 our customers that we will not stand for that and we will
14 run a process that is open, transparent and designed to
15 maximize value.

16 Your Honor, moving to Slide 8, and this is
17 important. And I'm sure the Court has read each and every
18 one of these letters as well. But I have read all 31
19 letters that have been filed to date on the docket. And the
20 stories told are heartbreaking and unnerving.

21 And I understand that many people are confused,
22 concerned and feel lost. I also know that McDermott, FTI
23 and the Committee intend to convene a meeting for all
24 customers in the near-term to clear up as many of the
25 questions and articulated concerns as they can, and we

1 welcome that, because that's exactly what this Customer
2 Committee is formed for.

3 I simply wanted to take a brief opportunity, Your
4 Honor, to address the key themes that I gleamed from the
5 letters, and hopefully clear up a few of the key questions
6 and confusion. Many customers indicated that all their
7 money will be lost. That is not true, as we discussed
8 today.

9 I'll come back to the FDIC in a minute, because
10 that bears a separate discussion. Customers have indicated
11 that they will not receive the cash held on Voyager's
12 platform. That likewise is not true. And Ms. Okike will
13 present our motion to distribute the close to \$300 million
14 held in the benefit only account at Metropolitan Bank.

15 Many of the letters indicated that no party is
16 interested in acquiring Voyager's business. Again, that is
17 untrue. We have multiple indications of interest, and we
18 are very pleased with the robust amount of interest that has
19 been maintained throughout the pre-petition and post-
20 petition process.

21 Flipping to Slide 9. There have been questions
22 and concerns regarding Voyager's stealing customer money and
23 profiting from the restructuring at the expense of
24 customers. And this goes to the point I made, Your Honor,
25 about dollarizing claims and having the company benefit from

1 the 14 and 17 percent rise in various coins.

2 That is exactly not what we're intending to do and
3 will not do. There was also a story that broke yesterday
4 about Mr. Ehrlich's sale of company shares 18 months ago
5 back in February and March 2021. And while that story seems
6 strategically placed in time, just want to make sure the
7 Court and all of our customers understand the facts.

8 When Voyager was first publicly listed in October
9 2020, Voyager traded at seven cents per share. It reached
10 its high of \$26 per share in March of '21. Mr. Ehrlich
11 originally held 8.9 million shares. He personally purchased
12 6 million shares and was given 2.9 million options to
13 purchase shares as part of his employment arrangement.

14 Mr. Ehrlich did in fact sell 1.9 million shares in
15 February and March of 2021. Those sales were on the heels
16 of a \$100 million primary offering at a time when the
17 publicly listed stock traded between \$13 and \$24. This was
18 also at a time interestingly when Bitcoin climbed by 455
19 percent and Ether jumped by 688 percent.

20 Standing here today, Mr. Ehrlich owns 4 million
21 shares and 2.9 million in options. Had he sold all of those
22 shares back in 2021 at the height of the market, he would've
23 mad \$200 million. But all of his remaining close to \$7
24 million in shares and options are proposed to be canceled
25 without compensation under the proposed plan.

1 And just like many of our customers, Mr. Ehrlich
2 and many employees at Voyager and their family members hold
3 cryptocurrency on the Voyager exchange. Mr. Ehrlich, his
4 family members and all the other employees are Voyager are
5 going to be treated just like everybody else.

6 THE COURT: All right.

7 MR. SUSSBERG: Your Honor, to other quick points
8 on this slide. There have been a lot of comments around
9 SIPC and whether or not this case was eligible for SIPC.
10 Interestingly, Voyager is not a member of SIPC, but that's
11 not through Voyager's doing. In fact, membership in SIPC
12 requires approval from FINRA. And FINRA has declined to
13 approve digital asset brokers like Voyager.

14 In fact, Voyager applied three different times.
15 We've got a real conflict in the government here because SEC
16 Chairman Gensler repeatedly says crypto is a security, yet
17 FINRA has denied membership over and over again. And so,
18 something this going to have to change on that front.

19 But I want to rest our customers assured that it
20 doesn't need to change in this case, because those issues
21 and those legal questions are not necessarily going to be
22 answered if we can figure out how to quickly get our assets
23 back into our customers' hands.

24 And finally, Your Honor, there are questions
25 around this process taking years to resolve itself. It's

1 simply not the case. Our case timeline, the sale and the
2 plan has this company emerging from bankruptcy in the first
3 quarter of next year. And we are committed to doing
4 everything we can to keeping to that schedule.

5 On Slide 10, Your Honor, and I think this is
6 important, I want to make sure the Court and all the
7 customers understand this. Voyager's relationship and
8 interaction with the Federal Deposit Insurance Corporation
9 did not begin on July 28t last week, when the FDIC issued
10 its press release and letter to Voyager.

11 On the contrary, Voyager has been in close contact
12 with the FDIC since early March of 2021, more than 16 months
13 ago. Now as Your Honor is aware, deposit insurance is one
14 of the significant benefits of having an account at an FDIC
15 insured bank. This means your deposits at a federally
16 insured bank are protected up to \$250,000 in the event of a
17 bank failure or theft.

18 So as an example, if you have one million in a
19 bank account at a federally insured bank, and that bank
20 fails subsequent to your deposit, you would get back at
21 least \$250,000. Now again, Ms. Okike will cover this in
22 detail today, but Metropolitan Bank represented by Mr. Mason
23 at Wachtel, is a place where customers deposit cash that can
24 be transferred to the Voyager platform.

25 And Metropolitan Bank is FDIC insured. Customer

1 cash at Metropolitan Bank is protected in the event of a
2 Metropolitan Bank failure, not a Voyager failure.
3 Regardless, we believe this is really a bit of a red
4 herring, as again, we're seeking today to return the close
5 to \$300 million in the Metropolitan Bank account to our
6 customers.

7 And I want to be clear, Voyager does not believe
8 that it knowingly made misrepresentations about the
9 existence of or the extent of deposit insurance.
10 Nonetheless, as we explained in our confidential response to
11 the FDIC, Voyager has reviewed all of its media statements
12 and remediated those statements to the extent they could've
13 been misconstrued.

14 Now finally, Your Honor, before I cede the podium,
15 I wanted to mention on Slide 11 the Three Arrows liquidation
16 proceedings, which are pending in front of Judge Glenn.
17 Voyager was one of five members identified and selected for
18 the Creditors Committee.

19 And based on media reports, I can't confirm
20 without getting into the specifics, that Voyager is not the
21 biggest Creditor of 3(a)(c). But Voyager is focused, as our
22 the other Committee members, on pursuing and collecting as
23 much as we possibly can on account of the Voyager \$650
24 million claim and the billions of other claims that exist
25 for other parties in interest.

1 And finally, just to drive home the point that has
2 been articulated in many of the letters, on Slide 12, we've
3 put forth our proposed case timeline. And it reiterates
4 what we've talked about from a sale and a plan perspective.
5 And while aggressive, we believe it's doable and necessary
6 because of the assets that we're dealing with and the
7 customers that rightfully deserved to get their assets back.

8 And everything is geared towards a September 7th
9 sale hearing and an October 31st confirmation hearing. We
10 are working diligently and around the clock on
11 documentation, including the disclosure statement, so that
12 we can be in a position to achieve these milestones and move
13 this case forward.

14 With that, Your Honor, I am happy to answer any
15 other questions, or we are prepared to hear from the
16 Committee or otherwise move right into the agenda.

17 MR. DIETDERICH: Your Honor, Andy Dietderich for
18 Alameda Research. At your convenience, Your Honor, I would
19 like to be heard.

20 THE COURT: Yes --

21 MR. DIETDERICH: And Your Honor --

22 THE COURT: -- in a moment. I just want to make a
23 few comments because I have a feeling that in this
24 particular case, we have a lot of people listening in, who
25 are not attorneys, who do not usually participate in

1 bankruptcy proceedings.

2 The Debtor's Counsel has just proposed his summary
3 of what the Debtor is proposing in some cases before me
4 today. And we'll make rulings on a lot of that today. I am
5 keenly aware that this particular bankruptcy has adversely
6 affected a lot of customers.

7 We have rules and statutes that we need to abide
8 by in bankruptcy. To the extent that it can be shown to me
9 that particular property doesn't belong to the Debtor, as
10 that term is used in the Bankruptcy Code and instead belongs
11 to somebody else, I have no intention of getting in the way
12 of somebody's access to such property. But that's something
13 that requires careful consideration that we will discuss
14 today.

15 One thing that all the customers should know. Any
16 sale process that happens in this case will only happen on
17 terms that I approve and under my supervision, and on terms
18 that will be subject to debate, if there's disagreement in
19 connection with any hearing.

20 So while the Debtors may administer the sale
21 process in the first instance, as much as they might have
22 done outside of bankruptcy, they will do so subject to
23 restrictions that I will impose and any final decision that
24 is made will only be approved if I believe that it is the
25 best deal that is available and is an appropriate deal for

1 approval under the Bankruptcy Code.

2 So if anybody is concerned that somebody might
3 interfere with the process, tilt the process, steer the
4 process, upset the process, those are all things that I
5 would consider and that I have the power to stop and that I
6 would not tolerate. Mr. Dietderich, did you have something
7 you wanted to say?

8 MR. DIETDERICH: I did, Your Honor, if it pleases
9 the Court, I would like to respond just briefly. I probably
10 have a few minutes of remarks, but I think it will help set
11 the tone in response to I think some of the statements that
12 have been made about Alameda.

13 So Your Honor, we were a bit surprised by the
14 presentation. We weren't provided that in advance. Our
15 client is being portrayed unfavorably for proposing a rescue
16 deal that helps customers. We don't think that's
17 appropriate. Alameda and the Debtors simply have different
18 ideas on how to help customers.

19 My clients had asked me to address the Court
20 briefly in response, just so the Court understands our
21 position in the case. Alameda, Your Honor, was and is first
22 a shareholder. It owns about 10 percent of the public
23 stock. There are many other shareholders, including retail
24 investors.

25 Shareholders also were harmed by Alameda's

1 failure. Once Creditors are paid in full, if they can be,
2 public equity owns the next dollars. Voyager solicited
3 Alameda for rescue capital when it learned of the impaired
4 loan to Three Arrows Capital.

5 That loan was \$650 million lent on an unsecured
6 basis. Alameda entered into a rescue loan facility in
7 response to management's request. It was intended to stop a
8 run on the bank. The use of proceeds was specific to fund
9 customer redemption.

10 It was to be repaid when the balance sheet
11 stabilized and crypto prices recovered. \$75 million of
12 Alameda's money was funded under that loan. Virtually all
13 of it went directly to customers. The loan facility helped
14 to stall the run on the bank, and created more time for
15 other customers to withdraw their money before the gates
16 closed.

17 Ultimately the rescue facility was unsuccessful to
18 prevent Chapter 11. Now when Voyager filed, Your Honor,
19 Alameda tried again to help. We proposed to move customer
20 assets out away from the estate immediately using a good
21 bank/bad bank structure.

22 Customers would have immediate liquidity in crypto
23 or cash, own all the appreciation in the crypto we could
24 extract, and also keep their claims against the liquidating
25 estate. We sincerely believed and continue to believe this

1 is the right approach for customers.

2 That was rejected violently. We spent two weeks.
3 We have not even received a counter proposal. Why? The
4 answer is in the bidding procedures. Now we were prepared
5 to contest the bidding procedures today, Your Honor, but
6 changes have been responsive to our comments and we have no
7 objection with you clarifying things when we get to that in
8 the hearing today.

9 But the answer is in the bidding procedures
10 Paragraph M. It says, "The Debtors prefer any sale to be
11 implemented in a plan." That's the difference of opinion.
12 In other words, the Debtors prefer to walk stakeholders in
13 until a plan can tie up all loose ends in the case.

14 And we appreciate the Debtors have a quick plan
15 schedule. If we have to wait for a plan, a quick plan's
16 better than a slow one. But that will be November at the
17 earliest, even on an optimistic schedule.

18 And so, that's the difference of opinion. The
19 difference of opinion is that we believe there is a way to
20 do this quicker for customers, the Debtors would like to
21 wait for a plan. And we have some concerns.

22 We can get into those in more detail when we get
23 to the bidding procedures, but I just wanted to address
24 immediately this idea that you know, Alameda has anything --
25 Alameda and the Debtor have a difference of opinion in how

1 to protect customers, Your Honor.

2 That difference of opinion is related to the pace
3 of the case. But it continues to be our perspective, and we
4 will continue to advocate as part of the bidding procedures
5 or otherwise to a quicker solution to customers and what the
6 Debtor's currently proposing.

7 THE COURT: All right. Let me make --

8 MR. SUSSBERG: Your Honor --

9 THE COURT: Let me make something clear. I
10 allowed the Debtor to make this presentation because I know
11 there are so many rumors that are circulating and so many
12 concerns that are circulating. I have no intention of
13 turning my Court hearings into a sort of cable news show
14 with people slinging accusations at each other and making
15 extremely characterized descriptions of what their prior
16 proposals or discussions were.

17 I don't know why all this is happening and why
18 it's happening in the press. Certainly the parties who are
19 on the phone know that's not how it's usually done in the
20 bankruptcy context and it ought to stop. Okay?

21 MR. AZMAN: Your Honor, it's Darren Azman for the
22 Committee, if I could make a few brief statements?

23 THE COURT: Yes.

24 MR. AZMAN: Good morning, Your Honor. Again, it's
25 Darren Azman from McDermott, Will & Emery. We are the

1 proposed Counsel to the Committee. Also on the line today
2 are a few McDermott colleagues, including my partner Chuck
3 Gibbs.

4 MR. GIBBS: Good morning, Your Honor. This is
5 Chuck Gibbs. It's a pleasure to be in your court today,
6 even though it's just virtual.

7 MR. AZMAN: All right, Your Honor, over the last
8 two weeks, we've had a lot of catching up to do and we
9 appreciate all the cooperation that we've received from the
10 Debtors and their professionals so far. We hope that
11 continues.

12 As Your Honor has quickly learned, there is no
13 shortage of novel issues at the intersection of crypto and
14 bankruptcy law. Unfortunately, we have a lot of experience
15 in this space. In particular, we were Committee Counsel in
16 a very similar case that was filed two years ago called Cred
17 Inc.

18 Cred was a yield-earning crypto platform, similar
19 to Voyager. So I think we will have a lot to offer, not
20 only to our Committee and the Creditor body, but hopefully
21 also for Your Honor on the difficult issues that all of us
22 will be facing together.

23 As an initial matter, I want everyone, customers
24 in particular, to know that the Committee has established
25 its own information website. As Mr. Sussberg noted, we'll

1 also be holding regular Town Halls to answer questions, and
2 to do our best to help customers understand the bankruptcy
3 process generally and specifically what is happening in this
4 case.

5 We are aiming to hold the first Town Hall next
6 week. Once that date is set, we will be filing a notice on
7 the docket with the time and date, along with logged
8 information for the Town Hall broadcast. In the meantime,
9 we are asking customers to submit questions that they would
10 like for us to answer during the Town Hall.

11 That can be done by sending an email. I can't say
12 we picked the most user-friendly email address, so let me
13 read it maybe a couple of times so folks have it. The email
14 address is VoyagerCommitteeInfo@epiq -- e-p-i-q --
15 global.com.

16 Again, it's VoyagerCommitteeInfo@epiqglobal.com.
17 We will include that email address on the notice that we
18 file hopefully next week regarding the Town Hall details.
19 We will try to address as many questions as possible at the
20 first Town Hall, and we will continue to host Town Halls as
21 long as needed to make sure that customers feel that their
22 voices are heard and that they understand what is happening
23 in this case. And for those unable to attend any of the
24 Town Halls, each one will be recorded and available on
25 YouTube.

1 Your Honor, I also want to preview what we expect
2 to see from the Debtors in this bankruptcy case. We've
3 already made this clear to them, and I think they are
4 largely aligned with us as reflected in many of the changes
5 that were made to the proposed orders on the agenda today.

6 First, to the extent the Debtors are holding
7 customer property that is not property of the estate, we
8 want that property returned to customers immediately. That
9 of course, is the subject of one of the motions on today's
10 agenda and we are hopeful that Your Honor enters that order.

11 Second, we want the Debtor's remaining property,
12 including crypto, distributed to Creditors and customers as
13 soon as possible. Whether that happens under a plan, a
14 transaction or some other mechanism is to be determined.
15 But there is a significant amount of crypto in this estate
16 and there's no reason why customers who are suffering deeply
17 should wait years for distribution as is often the case in
18 Chapter 11.

19 Third, the Debtor's Special Committee has retained
20 Quinn Emanuel to conduct an internal investigation. Our
21 working assumption, Your Honor, is that at the conclusion of
22 that investigation, there will be a report that either
23 supports the Debtor's proposed releases of insiders or it
24 does not.

25 We fully expect that the Special Committee and its

1 Counsel will act impartially, but the Creditor's Committee
2 needs to ensure that the process is fair, comprehensive and
3 transparent. And for that reason, the UCC will be
4 conducting its own investigation alongside the Special
5 Committee consistent with the UCC's statutory obligations.

6 The Debtors in the Special Committee have agreed
7 to cooperate in that investigation, including by producing
8 documents to us and allowing us to participate in the
9 Special Committee's informal interviews that will happen
10 with insiders and others.

11 And to the extent that the Debtors ultimately
12 support releases of claims that we believe have merit and
13 value, we will be prepared to explain to this Court and to
14 Creditors why the releases are improper and should not be
15 approved. But we will let that process play out and we will
16 see what happens.

17 Fourth, we expect a fast timeline in these cases.
18 You'll see that we worked with the Debtors to shave off
19 about three weeks from the original plan timeline that was
20 proposed. I don't think we can cut it down any more than
21 that. And we are hoping to stick to that timeline.

22 The goal here is to confirm the plan quickly, so
23 that a liquidation trust controlled by Creditors can begin
24 pursuing causes of action to make up whatever deficiency
25 remains after distributing the crypto and cash that is

1 currently on hand.

2 And Your Honor, based on our preliminary analysis,
3 and more importantly our experience in the crypto industry
4 that dates back all the way to 2013, by the way, we do
5 expect there to be significant litigation claims here. At
6 bottom, Your Honor, customers here deserve answers about
7 what happened and who should be held responsible, and they
8 will get those answers. That's all I have, Your Honor,
9 unless you have questions.

10 THE COURT: No, thank you very much. Are we ready
11 to proceed with the motions that are scheduled for today
12 now?

13 MR. SUSSBERG: Yes, Your Honor. We'd like to
14 proceed. I think we're going to start with the bid
15 procedures. Thank you.

16 MS. DAGNOLI: Sir? Sir?

17 THE COURT: Yes?

18 MS. DAGNOLI: I am one of the customers. At what
19 point do I get an opportunity to speak or ask questions? Or
20 I'm not really sure. I'm -- sorry, I'm new to this.

21 THE COURT: Okay. If you have comments on
22 particular motions, then after the lawyers have presented
23 their arguments, if you have something you want me to
24 consider, I'll ask for comments.

25 MS. DAGNOLI: Okay.

1 THE COURT: Do you have comments about the
2 particular motions that are scheduled today?

3 MS. DAGNOLI: Well, I'm not quite sure what the
4 motions are, so I guess I should speak after I hear the
5 motions.

6 THE COURT: All right. What is the -- what is it
7 that you wanted me to consider today?

8 MS. DAGNOLI: Well, sir, I just, you know, I just
9 want to thank you for hearing me. And I just want to
10 represent some of these customers that you know, I'm -- I
11 think I'm one of the largest investors or Creditors that are
12 now on this case.

13 And I just hope to speak on behalf of all of us.
14 But I did trust Voyager and their word and their promises.
15 I have over \$1 million of 24 years I worked in a family
16 business. I worked hours that I was away from my children.
17 I missed out on big, little, you name it. It was a family
18 business.

19 I don't speak with my brother anymore because of
20 it. I mean, I worked very hard for the money I got for the
21 sale in the end of 2020 on that business. It's on me, I
22 know crypto goes up and down. I understand there was risk.
23 But I did not fact in -- factor in that this company that
24 was saying, you know, as of Steven Ehrlich said in December
25 2021, I mean, six months ago or seven months ago, we expect

1 record earnings.

2 I mean, this is a company that's talking about how
3 great they're doing. They have Mark Cuban, Rob Gronkowski.
4 They have the Dallas Mavericks Arena, you know, with the
5 Voyager all over it. I mean, they're spending big money on
6 their marketing, on their people, on their locations.

7 Where was the heads up on this? So I just want to
8 say that I had over \$1 million invested on that platform. I
9 had \$350,000 that was for my kids' college on their USD coin
10 that they touted was FDIC insured and I read up on it. And
11 they had the Metropolitan Bank.

12 And I mean, if you look at their partners on their
13 website, there's all banks on there. I mean, it's
14 misleading. And I trusted them. I mean, I -- they made so
15 many fraudulent claims to lure in their customers and now
16 Creditors.

17 I mean, we funded them. And the lies and the
18 fraud continued until the beginning of July, when they
19 locked us all out of our own money. I mean, how -- it's
20 crypto, yeah, but it's a bank. They're holding our money.
21 It's a bank.

22 I mean, that's how I looked at it. I'm not, you
23 know, a advanced investor, but I looked at it, that this is
24 something long-term. The crypto will go up and down, but
25 I'll wait long-term, you know? I'll hold out for this

1 because I'll wait out the lows and I'll wait five, 10 years
2 if I had to and just sit on it.

3 That's my thinking. I didn't expect them to just
4 say, well, guess what? We're just folding. So I did not
5 feel like I got a notice. I didn't get a heads up. I just
6 you know, did not expect this. So I really feel like they
7 made themselves look like a healthy, viable, long-term
8 company.

9 Their leadership was, you know, supposed to be
10 experienced professionals. They were not fiscally
11 responsible. They -- I feel like they defrauded their
12 investors. They defrauded their customers. Where was the -
13 - in the first six months of 2022, when they knew things
14 were going south, why are they borrowing more money?

15 Why weren't they cutting jobs? Why weren't they
16 cutting costs? Did they cut costs? I don't know. But you
17 know, is Steven Ehrlich still getting paid and is he getting
18 bonuses? And what payment structure is in place for all of
19 these people right now? And if they restructure, is all our
20 money going in -- like who's starting that new company?
21 Who's funding it?

22 So I do feel like we're playing -- we're paying
23 the ultimate price for them being fiscally irresponsible.
24 And they had our trust. They had our money and they did not
25 run this company properly. You look at Coinbase, you look

1 at FTX --

2 MAN 1: Ma'am, I'm a customer, too. Can we please
3 proceed with the case? Thank you.

4 THE COURT: All right.

5 MS. DAGNOLI: Well, I'd like to be able to speak.

6 THE COURT: Stop, stop, stop right now. I will
7 not -- let me make it 100 percent clear -- I will not
8 tolerate interruptions and cross-talk. Is that clear to
9 everybody?

10 MS. DAGNOLI: Yes sir.

11 THE COURT: That's not in a court hearing.
12 Everything proceeds in order. Ms. Dagnoli, is that how you
13 pronounce your name?

14 MS. DAGNOLI: Yes, sir.

15 THE COURT: I understand your concerns and I
16 understand these are issues that a lot of customers have
17 raised in letters that they have filed. And unfortunately,
18 we are in a bankruptcy case. In a bankruptcy case, what
19 happens is, all of the assets that under the terms of the
20 law and the Bankruptcy Code belong to the Debtor.

21 Are made available for equal distribution among
22 Creditors in accordance with their legal rights. I know it
23 may seem strange to you, and it seems a lot of people don't
24 understand this, but a lot of people have raised concerns
25 about whether they were defrauded, or whether they were lied

1 to, whether something was stolen, a lot of concerns of that
2 kind.

3 Those are Creditor claims. It doesn't mean
4 necessarily that you have any bigger or lesser rights than
5 other Creditors or other customers who may not have been
6 defrauded. The issue -- some of the issues before me today
7 are whether some of the cash that's on deposit in the bank
8 really belongs directly to the customers and not to the
9 company, and therefore, shouldn't be part of the bankruptcy
10 proceeding.

11 It shouldn't be treated as an asset of the estate.
12 I have some questions to ask the parties about that because
13 I need to make sure that the rights of all Creditors are
14 protected, but that's one of the issues. But the fact that
15 you may feel wronged, while I am very sympathetic, and while
16 I am determined as is everybody to make sure that this case
17 moves as quickly as possible, so that you're not in limbo
18 forever, it doesn't mean that I can solve your problem
19 today.

20 It doesn't mean that I can simply say that you get
21 your cryptocurrency back, for example, where there are
22 issues about whether under the structure of these
23 relationships, that belongs to the Debtor. It doesn't mean
24 that I can do that today. In fact, I can't do that today.

25 If there were a valid, legal argument that had

1 been presented to me that showed that particular
2 cryptocurrency belonged to a customer and it didn't even
3 belong to the Debtor within the applicable rules, that would
4 be one thing. I don't have any such motion in front of me
5 today.

6 The Debtor's position and so far at least has been
7 that there's a difference between the cryptocurrency
8 holdings and the cash holdings. And that as a bankruptcy
9 matter, the cryptocurrencies are assets of the estate, and
10 the Creditor's individual rights are rights of Creditors.

11 Most people don't understand this, but as a
12 general matter, even when you have money on deposited on
13 bank, which you have as a Creditor claim against the bank,
14 there are rules in the bank context that change that, that
15 give you insurance, may give you prior rights.

16 But the underlying relationship is really a
17 Creditor relationship. And unfortunately, a lot of those
18 rules that apply to banks or securities brokers don't, at
19 least may not apply to Voyager. So I am very sympathetic to
20 you and everybody else who feels that they were wronged
21 here.

22 But being wronged, being owed cryptocurrency
23 because you're a customer and being owed something because
24 you are wrong or being owed your cryptocurrency because you
25 were wronged is really a Creditor claim. And the best way

1 to deal with that is to try to make sure that we move
2 through this bankruptcy case as quickly as possible.

3 But it doesn't necessarily mean at all that I can
4 simply say, well, everything should be given back to the
5 customers. That's not something that Bankruptcy Code just
6 allows me to do, unless there's some specific motion that
7 shows that that result is consistent with the requirements
8 of the law in the Bankruptcy Code. I hope that's an --
9 that's probably not a very comforting explanation, but I
10 hope that explains to you why people aren't immediately
11 reacting to allegations of fraud, okay?

12 THE COURT: I hope that's an -- it's probably not
13 a very comforting explanation but I hope that explains to
14 you why people aren't immediately reacting to allegations of
15 fraud, okay?

16 MS. DAGNOLI: Okay, thank you so much. I really
17 appreciate you hearing me and for explaining that.

18 THE COURT: Okay. All right, Mr. Sussberg, how do
19 you wish to proceed?

20 MR. SUSSBERG: Your Honor, we -- go ahead, go
21 ahead, Chris.

22 MR. MARCUS: This is Christopher Marcus from
23 Kirkland & Ellis on behalf of the Debtors. I was going to
24 take over from here and begin first with Item 14 on the
25 agenda, which is the bidding procedures motion, if that's

1 okay, Your Honor.

2 THE COURT: Can we take that last? Let's get the
3 easier things out of the way, and then take the FBO motion,
4 and then take the bidding procedures, if that's all right
5 with you.

6 MR. MARCUS: Of course, Your Honor, whatever your
7 preference.

8 THE COURT: All right.

9 MS. OKIKE: Good morning, Your Honor. Christine
10 Okike of Kirkland & Ellis on behalf of the Debtors.

11 THE COURT: Good morning, Ms. Okike.

12 MS. OKIKE: Your Honor, if we could start -- we're
13 going to skip around a little bit on -- on the agenda, if
14 that works. If we can start with Item Number 4, which is
15 the Debtors' cash management motion?

16 THE COURT: Okay.

17 MS. OKIKE: So, Your Honor, we filed the revised
18 proposed order at Docket Number 227. Subsequent to the
19 entry of the interim cash management order, we have had
20 discussions with the Committee, the U.S. Trustee and the
21 SEC, and the revised proposed order incorporates their
22 comments.

23 Your Honor, you probably saw that we've agreed to
24 seek a second interim order at this time while the U.S.
25 Trustee continues to evaluate the Debtors' cash management

1 system. If Your Honor is amenable, we'd like to schedule a
2 final hearing at the end of September. We were thinking
3 September 27th, if that works for Your Honor.

4 THE COURT: Lorraine, does that date work?

5 CLERK: I will check, Your Honor.

6 MS. OKIKE: So, Your Honor, while we wait to hear
7 back on the date, at the request of the Committee, we have
8 added --

9 CLERK: I'm sorry. Yes --

10 MS. OKIKE: Oh. Apologies...

11 CLERK: Yes, the September 27 works. I'm sorry.

12 THE COURT: Okay.

13 MS. OKIKE: Okay, thank you. Your Honor, at the
14 request of the Committee, we have added a provision that the
15 Debtors will not engage in any intercompany transactions
16 that involve payments from a debtor to a non-debtor without
17 prior consent of the Committee. And for clarification, we
18 are not seeking, through this motion, to make any payments
19 from debtors to non-debtors.

20 We have also agreed to provide the Committee with
21 a rolling 13-week cash-flow budget. The U.S. Trustee has
22 agreed to an extension of the date for the Debtors to come
23 into compliance with Section 345(b) to September 13th. I
24 would note that only one of the Debtors' banks, BMO, Bank of
25 Montreal, is not an authorized depository. And we have

1 transferred cash in excess of the Canadian equivalent of the
2 SBIC limit out of those accounts to one of our authorized
3 depositories. So, we believe that all -- all of the
4 Debtors' cash is adequately protected. And we need to
5 maintain that bank account at BMO, Bank of Montreal, because
6 some of our vendors only accept payment in Canadian dollars.

7 At the request of the SEC, we have included
8 language that nothing in the motion or order shall
9 constitute a finding as to whether the cash management
10 system complies with federal or state securities laws, and
11 the right of the SEC to challenge such transactions is
12 expressly reserved. And we've also provided, at the request
13 of the SEC, that nothing in the motion or the order
14 constitutes a finding under the federal securities laws as
15 to whether crypto tokens or transactions involving crypto
16 tokens are securities, and the right of the SEC to challenge
17 such transactions is expressly reserved.

18 We've also indicated on the bank account schedule
19 that the Debtors' -- the Silvergate bank accounts have been
20 closed and that the Debtors' BMO accounts, just for purposes
21 of clarification, are with BMO, Bank of Montreal.

22 Your Honor, with that, and there being no
23 objections to the motion, we would propose -- respectfully
24 request entry of the second interim order.

25 THE COURT: Are there any objections to the cash

1 management motion?

2 MR. MORRISSEY: Your Honor, Richard Morrissey for
3 the U.S. Trustee. The U.S. Trustee has no objection. But
4 I'd like to begin actually with a -- a point about the
5 September 27th hearing. Does the Court have a preferred
6 time for that hearing?

7 CLERK: 11 a.m.

8 MR. MORRISSEY: Thank you. Your Honor, the U.S.
9 Trustee has no objection. As Ms. Okike just said, we're
10 continuing to work with the Debtors so that, hopefully,
11 we'll have all our ducks in a row by -- by or before the
12 September 27th hearing. Thank you.

13 THE COURT: Okay. Anyone else? All right, Ms.
14 Okike, I have one question. I'm not sure when the last
15 version of this particular order was filed, so I guess I'm
16 not 100 percent sure I've seen the most recent one. So,
17 I'll ask you to submit it --

18 MS. OKIKE: Yes, Your Honor, we filed a revised
19 order at Docket Number 227.

20 THE COURT: What time was it filed?

21 MS. OKIKE: I believe that was late last night.

22 THE COURT: All right, I may or may not have seen
23 it, I just don't recall. But I wanted to ask you, because
24 later today we'll be considering the motion on the
25 withdrawals from the FBO account -- and Paragraph 6 of the

1 proposed -- proposed order for that motion refers to
2 Paragraph 8 of the cash management order.

3 MS. OKIKE: Yes.

4 THE COURT: It seems to imply that I have already
5 given the bank that authority in the cash management to
6 honor cash withdrawals from customers from the FBO accounts.
7 Is that correct --

8 MS. OKIKE: No, Your Honor. No. So, you may
9 recall at the first day hearing, we sought approval to step
10 into MC Bank's shoes with respect to disputing ACH
11 chargebacks. So, because Voyager doesn't have a direct
12 relationship with customers in terms of transferring cash,
13 MC Bank and Voyager agree that we would step into their
14 shoes for purposes of challenging fraudulent ACH
15 chargebacks. And so we just wanted to make sure that the
16 rights that were granted to us through the first interim
17 order still remain in effect, notwithstanding the release of
18 cash from the FBO account, assuming that that motion is
19 granted.

20 THE COURT: Okay. All right. I don't think I
21 have any issues with the cash management order then but I
22 just need to look at it to make sure.

23 MS. OKIKE: Understood, Your Honor.

24 THE COURT: Okay.

25 MS. OKIKE: Your Honor, with that, I'll turn the

1 podium over to my colleague, Ms. Smith, who'll walk through
2 some additional motions that are up for hearing today.

3 THE COURT: Very good. Ms. Smith? You may be
4 muted.

5 MS. OKIKE: Your Honor, I believe Ms. Smith -- I
6 believe she got kicked off. So, we have a couple people
7 presenting, so why don't we move -- I'll move to Ms. Clark
8 next.

9 THE COURT: Okay.

10 MS. CLARK: Good morning, Your Honor. Erica Clark
11 from Kirkland & Ellis, proposed counsel for the Debtors.
12 Can you hear me okay?

13 THE COURT: I can, yes.

14 MS. CLARK: Thank you. I'm going to take us
15 through the next few items on the agenda starting with
16 Agenda Item Number 1, the insurance motion, which was
17 initially filed at Docket Number 3.

18 Today, the Debtors' request authority on a final
19 basis to pay obligations that may arise under the insurance
20 policies and charity bonds in the ordinary course. As Your
21 Honor may recall, we did not submit an interim insurance
22 order for court approval under your guidance, as there were
23 not prepetition amounts due and owing at the time of filing.

24 Since filing the motion, no objections have been
25 filed, however, we have received and incorporated informal

1 comments from the SEC and the Committee which were reflected
2 in the -- the proposed order that was filed on August 2nd at
3 Docket Number 203.

4 Unless Your Honor has any questions with respect
5 to the proposed order, we would respectfully request that
6 the Court grant the relief requested in the -- in the
7 insurance motion and enter the order as proposed at Docket
8 Number 203.

9 THE COURT: All right, I haven't seen any
10 objections on file. Is there anybody on the phone who has
11 an objection to the insurance order? All right, I hear no
12 objections. The proposed order that I reviewed looked fine
13 to me and we'll approve it.

14 MS. CLARK: Thank you, Your Honor. The next item
15 on the agenda is Agenda Item Number 3, the wages motion,
16 which was initially filed at Docket Number 8. Here, the
17 Debtors are seeking entry of a final order authorizing the
18 Debtors to pay employee wages and continue their
19 compensation and benefits programs. Your Honor entered the
20 interim wages order on July 8th at Docket Number 57. Since
21 that time, no objections to the wages motion have been
22 filed. However, we did incorporate the SEC's informal
23 comment to the revised proposed wages order that was filed
24 on August 2nd at Docket Number 206.

25 Unless Your Honor has any questions with respect

1 to the final revised proposed order, we would request that
2 the Court enter the order as proposed at Docket Number 206.

3 THE COURT: Does anybody object to the motion as
4 to the employee applications and the proposed order?

5 MR. MORRISSEY: Your Honor, Richard Morrissey
6 again for the U.S. Trustee. The U.S. Trustee has no
7 objection but we do have something in the way of an update
8 with respect to one of the aspects of the wages motion.

9 There were -- there was a reference to non-insider
10 severance benefits that may or may not be payable at the
11 beginning of the case. Also, non-insider ad hoc bonuses.
12 These were relatively de minimis bonuses but at the time of
13 the filing, I don't think the Debtor was aware of whether
14 there were any such bonuses to be paid.

15 I understand that, number one, Your Honor, as of
16 today, there are no non-insider severance payments to be
17 made, so that's not an issue. However, regarding ad hoc
18 bonuses, there were a few contemplated. I believe there
19 were five individuals, all non-insiders, and the bonuses
20 were sign-on bonuses. And my understanding, Your Honor, is
21 that these employees signed on prepetition and -- in other
22 words, they became employees prepetition -- and they were to
23 earn the sign-on bonuses not immediately but after a certain
24 specified period of time. That period of time carried into
25 the post-petition period.

1 So, they did earn those sign-on bonuses and they
2 were -- you know, again, they range from 5,000 to 20,000, I
3 believe, at the top. So, the -- so, that's sort of an
4 update. The U.S. Trustee has no objection to that but I
5 just wanted the Court to be aware of that minor development.
6 The U.S. Trustee has no objection to the proposed order.
7 Thank you.

8 THE COURT: All right, anybody else?

9 MS. DAGNOLI: This is Lisa Dagnoli. I just -- I
10 would object to paying, you know, wages and benefits to a
11 company that's filing -- for this company, that's filing
12 bankruptcy. I guess I don't agree with that but I'm not
13 really sure how to go about it.

14 THE COURT: All right. Well, just to be clear,
15 Ms. Dagnoli, the motion is not about paying wages and
16 benefits earned after the bankruptcy date. That happens
17 automatically under the Bankruptcy Code in the ordinary
18 course of business. The motion is about paying wages and
19 obligations that have accrued prior to the date of the
20 bankruptcy.

21 MS. DAGNOLI: Okay, thank you, sir.

22 THE COURT: Do you -- do you have an objection or
23 not have an objection?

24 MS. DAGNOLI: Well, personally, I would have an
25 objection because I feel that that's probably going to come

1 out of, you know, the bucket of -- you know, the pie of
2 what's going to be distributed.

3 THE COURT: Do the Debtors or the Committee have a
4 response?

5 MS. CLARK: Your Honor, this is Erica Clark again
6 in representation of the Debtors. As we kind of disclosed
7 on the first day, the Debtors currently have about 351
8 individuals across the United States, Denmark, Canada,
9 France and Latin America that they employ and are in need of
10 their services in order to ensure that the operations are
11 continued post-petition as well as making sure that the
12 platform continues to be up and running.

13 These employees are reliant on -- on their
14 compensation and their benefits programs and would suffer
15 great hardship if those amounts are not paid. And so we --
16 we would seek authority from the Court in order to make sure
17 that the employees are reassured that they are -- they're
18 important in this case and that we would like to continue to
19 pay them. We would like to pay them for their prepetition
20 amounts and we would also like to continue to pay them for
21 post-petition amounts.

22 MR. AZMAN: Your Honor, it's Darren Azman for the
23 Committee. We view the sale process that's occurring as an
24 integral part of this bankruptcy case and the overall
25 recovery that customers, including the party objecting, will

1 ultimately receive in this case. Nonpayment of prepetition
2 wages is likely to have an incredibly negative impact on
3 whether employees are willing to stick around. And
4 employees leaving at this critical time would be incredibly
5 detrimental to the overall sale process.

6 And so for (indiscernible) we would -- we support
7 the Debtors' motion and think it's critical that the motion
8 be approved and that prepetition wages be paid.

9 THE COURT: Did you understand that response, Mr.
10 -- Ms. Dagnoli? Essentially, the argument is that the best
11 way for you and other creditors and customers to get
12 recoveries that are as high and as quick as possible is to
13 be able to either sell or reorganize this business as an
14 actual operating business as quickly and on the best terms
15 possible. And, in that regard, that it would be essentially
16 cutting off your nose to spite the face -- to spite your
17 face to say that you can't pay the employees because that
18 would basically dismantle the business you're trying to
19 sell. Does that make sense to you?

20 MS. DAGNOLI: Yes, sir, thank you for explaining
21 that.

22 THE COURT: Okay. Anyone else wish to be heard?

23 MR. DOTSON: Your Honor, Cordero Dotson, one of
24 the customers on the Voyager platform. May I please have a
25 moment just to give my input?

1 THE COURT: Yes.

2 MR. DOTSON: Thank you, sir. I apologize for not
3 speaking up in the first hearing. I attended but I wanted
4 to seek more professional knowledge from a law firm such as
5 the Chelsea and whatnot. And I just wanted to position
6 myself as an owner and a depositor of my cryptocurrency.

7 I'm witnessing ten years of my life being frozen
8 on a platform that I trusted. They are not a bank, though,
9 they allowed me to use them in such a way. They are a
10 brokerage. And for me to hear through the recklessness of
11 risk assessment and management that over a half a billion
12 dollars was owned out to a single entity and
13 uncollateralized, and the penalty of that is that I am no
14 longer the rightful owner of my cryptocurrency is quite
15 hurtful.

16 And I understand that the importance of this case
17 is not only for what is going on currently but will affect
18 generations to come when it comes to digital assets and the
19 management of who's the rightful owner. There's a sentiment
20 in the space that if you do not have the rightful ownership
21 of your private keys, that is not your crypto, though you
22 may have trusted a third-party entity such as Voyager to be
23 the secured -- to secure your assets and to hold your --
24 your digital assets until your claim of ownership.

25 And I don't understand how me, that had no prior

1 knowledge -- I'm 32-years old -- I had no prior knowledge
2 that I would be considered to be a creditor or unsecured
3 creditor in this motion. I've always identified myself as
4 an owner and a rightful depositor of the cryptocurrency that
5 was provided on their platform, and I've been a supporter of
6 this business entity before it was even called Voyager --
7 when it previously called Ethos.

8 So, I feel that I have more ownership than the
9 ones that were selected to be in the board of directors or
10 the CEO himself, since I was present before all proceeding
11 members that Kirkland represents. And I just want to get
12 more of a handle on why I'm being labeled a creditor or
13 unsecured creditor instead of an owner of my cryptocurrency,
14 sir.

15 THE COURT: Well, all right. Right now what we
16 have before us is the motion for approval of the payment of
17 the employees. Did you have an objection to that?

18 MR. DOTSON: No, sir, I don't. I totally agree
19 with the Debtors on any charges that were accruing before
20 the halt of transactions on their platform should be paid
21 out to those employees, though I do not agree with them not
22 laying off their staff and only prioritizing those that can
23 maintain the operations, the day-to-day of the maintenance
24 of the platform.

25 THE COURT: All right. As to the nature of your

1 claim as a creditor, I explained that as best as I could to
2 Ms. Dagnoli. As I understand the position that the Debtors
3 explained to me on the first date, under the customer
4 agreement, cryptocurrency is held in the Debtors' name, and
5 the Debtors had the right to lend it, or to stake it, or to
6 re-hypothecate it and to do other things.

7 Ordinarily what that means is that the property
8 ownership actually resides with the Debtors. And your claim
9 to a particular currency, cryptocurrency, is a creditor
10 claim. I -- I can't -- I'm sorry but I can't turn this
11 hearing into a tutorial. I have to address the particular
12 motions that are in front of me. But that's, as I
13 understand it, the basis for the Debtors' position that the
14 cryptocurrency is an asset of the estate. And if you've
15 been in touch with counsel, perhaps they can explain that to
16 you a little more clearly, okay?

17 MR. DOTSON: Thank you, Your Honor. Yeah, I just
18 need some clarity on that, that's all. It's -- it's totally
19 confusing for me to witness well over seven figures being
20 frozen on the platform that -- that I trusted. And there
21 was no preceding or like, information that I saw that was
22 presentable to customers that would -- would state these
23 claims that by me depositing my funds here, that I no longer
24 had the ownership of it and that it could be used in
25 situations as an uncollateralized loan.

1 So, that's why I just felt -- where I actually
2 feel a bit lost. And I don't really see much is being
3 spoken on the customers' behalf on the rightful ownership of
4 these digital assets. You know, the customers are very
5 flexible. We'll even do time locks, decrease the
6 withdrawals. But we just really want Voyager to acknowledge
7 the ownership of the cryptocurrency belongs to the customers
8 that provided the liquidity for this -- for Voyager to -- to
9 be what it is today.

10 THE COURT: All right. As to the employee motion,
11 is there anybody else who wishes to be heard? All right,
12 I'm going to grant the motion. It is relatively ordinary
13 relief in a bankruptcy case. I do understand the concerns
14 of customers who have opposed it. To some extent, some of
15 the attitude seems to be that customers don't want employees
16 to get anything because they were part of the problem.
17 That's not a constructive way to approach the maximization
18 of the value of the assets of this estate. And I agree with
19 the Debtors and the Committee in their business judgment
20 that this is an appropriate thing to do.

21 Hopefully, what will happen here will make
22 customers, if not happy, at least get them the best result
23 that we can get under the circumstances. But we're not
24 going to accomplish that by kind of throwing things aside
25 and destroying the business that we're actually trying to --

1 to rescue, okay?

2 MS. CLARK: Thank you, Your Honor. The last item
3 that I will be --

4 THE COURT: If there's any other customer that has
5 a general question about the cryptocurrency and who it
6 belongs to, I encourage you to just -- you have a creditors
7 committee. They can speak with you more directly. I'm
8 really supposed to be ruling on specific requests for
9 relief, not kind of answering general questions. Okay?

10 MS. CLARK: Thank you, Your Honor. And I'm sorry
11 I cut you off earlier. The last item that I will be
12 presenting is Agenda Item Number 6, the taxes motion, which
13 was originally filed at Docket Number 30. The Debtors are
14 seeking a final order authorizing the Debtors to pay any
15 outstanding prepetition taxes and fees owed in the ordinary
16 course of business.

17 Similarly to the weighted motion, Your Honor
18 entered an interim taxes order on July 8th at Docket Number
19 56. Since that time, no objections to the taxes motion have
20 been filed. But the revised proposed order filed at Docket
21 Number 197 includes similar informal comments from the
22 Committee and the SEC.

23 Unless Your Honor has any questions, we would
24 respectfully request that the Court enter the order as
25 proposed at Docket Number 197.

1 THE COURT: All right, I didn't see any
2 objections. Are there any objections? All right, I'll
3 approve that order. Thank you.

4 MS. CLARK: Thank you, Your Honor. That's all for
5 me. I'll now hand it over to my colleague, Allyson Smith.
6 I think she's been reconnected.

7 MS. SMITH: Yes, thank you, Erica. And apologies
8 again, Your Honor, for before. I did accidentally get
9 disconnected. For the record, Allyson Smith, Kirkland &
10 Ellis, proposed counsel to the Debtors. If it's all right
11 with Your Honor, I will just continue taking us through the
12 agenda, moving next to Item Number 7.

13 THE COURT: All right.

14 MS. SMITH: The interim compensation motion, which
15 seeks to establish procedures for interim compensation and
16 reimbursement of expenses for retained professionals was
17 originally filed at Docket Number 95. We did file a revised
18 proposed order on Tuesday evening at Docket Number 194.
19 There were no formal objections received, though we did
20 incorporate informal comments received from the Committee
21 and the SEC.

22 Additionally, we understand that Your Honor has a
23 preference to address the release of holdbacks in connection
24 with interim fee applications rather than now in advance.
25 So, while not currently reflected in the order, we will add

1 language before submitting to chambers that make clear
2 interim approvals are without prejudice to objections or to
3 changes at the final hearing.

4 We will also propose to add language to make clear
5 that when interim applications are filed, parties must
6 include a consolidated set of time records rather than refer
7 to docket numbers of prior monthly statements to hopefully
8 make things easier and more efficient for Your Honor.

9 Unless Your Honor has any questions, we'd ask that
10 the order with the changes I just mentioned above
11 incorporated be approved.

12 THE COURT: All right, does anybody have any
13 objections to this motion? All right, I'll approve it. The
14 language about attaching the full-time records should also
15 make clear that the -- the interim compensation applications
16 that are submitted to me should complete -- should not just
17 incorporate other documents by reference.

18 I know it's efficient for the lawyers to
19 incorporate their prior monthly submissions, but if they do
20 that, it essentially means that every time this comes up I
21 have to read four documents for each party instead of one,
22 which gets confusing (indiscernible). The interim
23 compensation applications should stand on their own.

24 MS. SMITH: Understood, Your Honor. And we will
25 make sure that the order we submit to chambers reflects

1 that.

2 THE COURT: Very good.

3 MS. SMITH: The next item on the agenda is the
4 ordinary course professionals motion, originally filed at
5 Docket Number 96. This motion seeks an order authorizing
6 the appointment or retention of certain legal services
7 utilized in the ordinary course of the Debtors' business.
8 No formal objections were received, though we did
9 incorporate comments from the Committee and SEC.
10 Specifically, we added the Committee has a notice party and
11 as a party whose consent is required to mutually agree to
12 increase the monthly cap or case cap. And we added the same
13 SEC language that you will see throughout various orders.

14 Additionally, we thank Mr. Morrissey and his team
15 for working so collaboratively with us. We did clarify a
16 number of pieces of information with him and the U.S.
17 Trustee's Office, and I will state some of those on the
18 record here for parties.

19 First, only legal service professionals are
20 proposed to be OCPs. Second -- and I'll address
21 specifically what services the firms provide in a moment --
22 we discussed at length with Mr. Morrissey to assure that
23 there's no overlap or duplication of services between
24 Kirkland and the proposed OCPs. The OCPs provide distinct
25 services, including defending against a specific class

1 action litigation, copyright litigation, counsel regarding
2 registration licenses and the New York Department of
3 Financial Services, U.S. Securities counsel, local counsel
4 from various litigation matters, intellectual property
5 advice, employment loss services, U.S. and European banking
6 and regulatory advice, marketing legal advice and BVI
7 counsel in connection with the Three Arrows liquidation
8 proceedings, in which, as stated earlier, Voyager is on the
9 Creditors Committee.

10 On that last point, you'll see in the redline we
11 filed at Docket Number 202 that we added a new BVI counsel,
12 Campbells. Campbells will be replacing, not supplementing,
13 the initial BVI counsel, Conyers. So, at any point in time,
14 there is only one BVI counsel; not both. And that swap just
15 recently occurred this past week.

16 Unless Your Honor has any questions, we would
17 respectfully ask that the OCP order be entered.

18 THE COURT: Are there any objections? All right,
19 I have one comment. In the -- I know you've negotiated as
20 to who gets to consent to change in the caps that apply for
21 the interim compensation, but actually I think that's a
22 determination that should be made by me. So, if you want to
23 change the caps, you'll need my approval. You can ask for
24 it --

25 MS. SMITH: Absolutely.

1 THE COURT: -- okay? That'll require a few
2 changes throughout your order.

3 MS. SMITH: Absolutely. We will make those before
4 submitting to chambers.

5 THE COURT: Okay.

6 MS. SMITH: Thank you, Your Honor. Next up is
7 Stretto's 327 retention application. It was originally
8 filed at Docket Number 97. In support of this application
9 is the declaration of Cheryl (indiscernible). Unless Your
10 Honor has any questions, I would like to move that
11 declaration into evidence.

12 THE COURT: Are there any objections to the
13 receipt of the declaration in evidence? All right, it's
14 admitted. Thank you.

15 MS. SMITH: Thank you. Stretto was previously
16 retained as claims and noticing agent under Section 156(c).
17 That approval was entered at Docket Number 67. Today, we
18 seek to retain Stretto for the administrative services that
19 they will be providing to the Debtors outside the scope of
20 156(c). A revised proposed order was filed in advance of
21 today's hearing at Docket Number 195, and it reflects the
22 comments received from the U.S. Trustee. Otherwise, no
23 formal objections were filed.

24 Unless Your Honor has any questions, we would ask
25 that Stretto's 327 retention be approved.

1 THE COURT: Does anyone have any objections?

2 MR. MORRISSEY: Your Honor, Richard Morrissey for
3 the U.S. Trustee. The U.S. Trustee has no objections. As
4 Ms. Smith has just said, there were a couple of changes
5 made. Namely, that the -- that Stretto's retainer will be
6 applied to the first allowed fees, which I would expect
7 would be interim fees in this case.

8 Also, Your Honor, going back to the first hearing
9 I wanted to assure the Court that there is no Xclaim issue
10 here. There will be no dealings with Xclaim in this case in
11 the 327 context, just as there was none -- or there is to be
12 none in the Section 156(c) context. But, overall, Your
13 Honor, the U.S. Trustee has no objection to the retention.
14 Thank you.

15 THE COURT: All right. In the prior order on the
16 retention to perform the noticing services, didn't it
17 address various -- various arbitration provisions and
18 limitations (indiscernible), and don't they need to be
19 addressed in this context as well?

20 MS. SMITH: Yes, Your Honor, we can -- we can add
21 those same provisions to this order.

22 THE COURT: Okay. And then consistent with what
23 Mr. Morrissey just said, is there any reason why we
24 shouldn't say in this order what we said in the prior order?
25 I wouldn't want this to be used as a backdoor way of doing

1 any of the Xclaim business that we were discussing.

2 MS. SMITH: Of course. We actually included
3 language already. It's Paragraph 13, I believe, and it's
4 the same language that was in their 156(c) order.

5 THE COURT: Okay, I didn't see that in what I had
6 reviewed. Perhaps I overlooked it. But okay, thanks.

7 MS. SMITH: Of course. It's okay to move to the
8 next item?

9 THE COURT: Yes.

10 MS. SMITH: Thank you. The next item is the
11 application to retain and employ Kirkland & Ellis as
12 attorneys in these Chapter 11 cases and related matters. It
13 was originally filed at Docket Number 116. In support of
14 our application there are two declarations from Mr. Josh
15 Sussberg and one from Mr. Steve Ulrich. Unless Your Honor
16 has questions, I would ask to submit these three
17 declarations into evidence.

18 THE COURT: Are there any objections to the
19 receipt of the declarations in evidence? All right, they
20 are admitted.

21 (Declarations to retain Kirkland & Ellis Admitted into
22 Evidence)

23 MS. SMITH: Thank you, Your Honor. No formal
24 objections were filed to Kirkland's retention. We did
25 receive a handful of informal comments from Mr. Morrissey's

1 offices, which are addressed in Mr. Sussberg's supplemental
2 application at Docket Number 201. Specifically, the
3 supplemental declaration clarifies the meaning of overtime
4 expenses, affirms that Kirkland will not charge the Debtors
5 for standard office supplies, and confirms that Kirkland's
6 hourly rates have not changed since the petition date.

7 There were no other changes to the order since
8 filing, but I did want to highlight that we took guidance
9 from our colleagues on the Aegean and Hollander matters and
10 included a paragraph in the order. It's Paragraph 8 that
11 states certain provisions of the engagement letter are
12 stricken. We understand that's your preference and so we
13 did make sure to include that from the outset.

14 THE COURT: All right, are there any objection so
15 the Kirkland (indiscernible) retention? All right, I saw
16 that you addressed those provisions of the engagement letter
17 and the proposed order looks fine to me. I'll approve it.

18 MS. SMITH: Thank you, Your Honor. The next item
19 on the agenda is the retention of Moelis & Company as
20 investment banker and capital markets advisor to the
21 Debtors. We are still finalizing a few open items with Mr.
22 Morrissey's team. And though we are confident we will reach
23 a resolution, we're not quite there yet. The order is
24 otherwise fully consensual and incorporates comments and
25 revisions from the Committee. We've also incorporated

1 comments by the SEC which will be reflected in the revised
2 order.

3 If okay with Your Honor, we would ask that we
4 continue to work with the U.S. Trustee's Office and, upon
5 resolution of the outstanding items, submit a proposed order
6 to chambers. Of course, to the extent Your Honor has any
7 questions or concerns, we're happy to address them at the
8 next omnibus hearing on August 16th or at whichever time
9 Your Honor (indiscernible)...

10 THE COURT: Yeah. I do have some questions. I
11 don't know if they're the same things you're discussing with
12 the United States Trustee. The proposed letter says that
13 there will be a restructuring fee of \$11 million, payable in
14 connection with each restructuring in the event that more
15 than one restructuring occurs. That seems concerning to me,
16 particularly since restructuring as a term is defined
17 (indiscernible) include a restructuring of any material
18 portion of the liabilities of the company. That suggests to
19 me if that -- for some example, parts of the business were
20 sold to one entity and parts to another entity, I would be
21 paying \$22 million in fees instead of \$11 million in fees.

22 And (indiscernible) while I understand the overall
23 restructuring fee, I have trouble understanding the reasons
24 why there would be an \$11 million fee for every little
25 subdivision of a restructuring. Can you explain that to me?

1 MS. SMITH: It's just one, Your Honor. They would
2 not be subject -- or they would not be entitled to multiple
3 restructuring fees.

4 MR. AZMAN: Your Honor, it's Darren Azman from the
5 Committee. This was the same concern that we had. The
6 proposed order that the Debtors have uploaded -- and it may
7 have only been filed last night so it's possible Your Honor
8 hadn't had a chance to look at it yet -- does address
9 exactly that issue. And we are comfortable that -- and
10 you've just heard the Debtors' statement on the record that
11 there is only one potential fee. There cannot be a
12 restructuring fee and a sale fee, there cannot be multiple
13 sale fees, there cannot be multiple restructuring fees.
14 It's going to be one fee.

15 THE COURT: Okay. And as to the capital
16 transaction fee, are you even proposing to do a capital
17 transaction at the moment?

18 MS. SMITH: As part of the bidding process, we are
19 really open to -- to all bids and all transactions. So, I
20 think it's a -- I think it's a little too early to know for
21 sure that that's not on the table. We are very early in the
22 cases, as Your Honor is aware, and as you -- as you can see
23 from the bidding procedures and process that we've set forth
24 that Mr. Marcus will address, we really are exploring every
25 single option to provide the best -- the best value to the

1 estates and stakeholders.

2 THE COURT: Well, it'd be one thing if you were
3 out looking for equity financing or trying to raise debt
4 capital on your own. If somebody comes to you with a
5 proposal and their preferred structure is that they buy
6 (indiscernible) equity, you're not proposing to pay a
7 capital transaction fee, are you? That's just a sale.

8 MS. SMITH: That's right, Your Honor.

9 THE COURT: Well, in that case, you know, I think
10 the only thing you're proposing right now is that you'll
11 solicit offers from third parties; not that you're trying to
12 look for equity financing or debt financing to reorganize on
13 your own. So, unless and until you get to that point, why
14 should I approve capital transaction fees at the moment?

15 My concern with financing fees, in general, and
16 investment bankers' retentions -- I've represented bankers
17 for years -- those are usually the ones that generate the
18 biggest surprises in the cases because they're approved but
19 they're often approved at a time when you don't even know
20 what financing, if any, is being sought or what roles people
21 will play in the financing. Why shouldn't we wait until
22 you're actually trying to do something before we approve any
23 particular role or any particular fee in connection with the
24 capital transaction?

25 MS. SMITH: We will, of course, defer and take

1 your guidance, Your Honor. But I think, you know, again, we
2 are exploring all alternatives. And as part of a -- as part
3 of a restructuring transaction it's very possible that a
4 component of that transaction is a rights offering, in which
5 case, (indiscernible) would be potentially triggered or
6 would be triggered. And so, again, I think, from our
7 perspective, it is too early to rule anything out. But,
8 again, we will -- we will take Your Honor's guidance.

9 And we're not -- and just to kind of circle back
10 to where I originally started -- we're not seeking approval
11 of this right now. There are still open issues with the
12 Trustee, so we can certainly discuss with Moelis --

13 THE COURT: Okay.

14 MS. SMITH: -- and come back to Your Honor with a
15 proposed order.

16 THE COURT: All right. Does anyone else wish to
17 be heard in regard to that question that I raised?

18 MR. AZMAN: Your Honor, it's Darren Azman for the
19 Committee. Understood on your concerns with the capital
20 transaction fee. The only other -- the only other note I
21 want to point out is that we -- we added a crediting
22 component with respect to the capital transaction fees.
23 And, again, I don't know if Your Honor had a chance to -- to
24 see that yet. I won't detail what it is here because it's
25 somewhat complicated, but essentially a portion of the

1 capital transaction fees, if one accrues, will be credited
2 against any restructuring fee or sale transaction fee. It's
3 not one-to-one but it scales up from, I think, 25 percent
4 all the way up to potentially 50 percent, depending on how
5 big the capital transaction is.

6 THE COURT: All right. Why don't you discuss with
7 Moelis and with the Committee whether they think that a
8 capital transaction really needs to be addressed at this
9 point? And if they think so, we can address that part at
10 the August 16th hearing, okay?

11 MS. SMITH: Of course, Your Honor. Will do. The
12 last item that you'll be hearing --

13 MR. MORRISSEY: Excuse me. Excuse me, Allyson.
14 Richard Morrissey for the U.S. Trustee. For one thing, the
15 Court hasn't ruled, but the point I wanted to make to Your
16 Honor is there were actually three hats that Moelis was
17 originally going to wear. In addition to being the
18 investment banker and dealing with capital transactions,
19 they were also going to be the financial advisor. They've
20 taken that component out of the retention papers and out of
21 the retention order. So, I think that should simplify
22 things.

23 As far as the discussions that obviously we all
24 will have with the Committee, Moelis and the Debtors on
25 this, is that when we get to the fee application stage, we

1 always look back to the retention order to see what was
2 contemplated there. And if there's a different kind of a
3 fee that appears in the fee application, we may have a
4 problem with that if we don't see it authorized in advanced
5 in the retention order.

6 But, again, retention orders can be modified
7 during the course of a case. But we will be discussing that
8 issue with the parties. Thank you.

9 THE COURT: All right. Well, to be clear, my
10 intention was to approve the retention of Moelis subject to
11 seeing the final language as to the sale and restructuring
12 transaction fees and whatever other issues are being
13 finalized with the U.S. Trustee, and to defer the retention
14 as to capital transactions until August 16th with the idea
15 that if the parties think that should be added, we can add
16 it at that time.

17 MS. SMITH: Thank you, Your Honor. Let us confirm
18 with the Moelis team. I just don't want to speak without
19 consulting with them. But I think that -- that may be
20 workable. But let us confirm with them and we will
21 certainly coordinate with chambers.

22 THE COURT: All right.

23 MS. SMITH: Then the last item that you will hear
24 from me on this afternoon is the retention application of
25 Quinn Emanuel as special counsel to Debtor, Voyager Digital,

1 LLC, in connection with the special committee's
2 investigation at that entity. The application was filed at
3 Docket Number 125 and is supported by the declarations of
4 Susheel Kirpalani and Steve Ulrich. Unless any questions, I
5 would like to move those two declarations into evidence.

6 THE COURT: Are there any objections to the
7 admission of those declarations into evidence? All right,
8 they are admitted.

9 (Kirpalani and Ulrich Declarations Admitted into Evidence)

10 MS. SMITH: Thank you, Your Honor. No formal
11 objections were filed. The U.S. Trustee raised one informal
12 objection which was reserved with language in the revised
13 order. Unless Your Honor has any additional questions, we
14 would ask that the Quinn Emanuel retention also be approved.

15 THE COURT: Okay, are there any objections?

16 MR. MORRISSEY: Your Honor, Richard Morrissey for
17 the U.S. Trustee. I just wanted the Court to be aware that
18 Quinn Emanuel, which has a connection to Alan Meda, has
19 added a provision to the proposed retention order that
20 whatever it is doing in this case, it will not be dealing
21 with any claim or cause of action that Alan Meda may have
22 against the Debtors or vice versa.

23 So, with that, Your Honor, the U.S. Trustee has no
24 objection. Thank you.

25 THE COURT: I did see that provision, thanks. All

1 right, anything else that anybody wishes to say in regard to
2 the retention of Quinn Emanuel? Very good, I'll approved
3 that. I saw the order, it looked fine.

4 MS. SMITH: Thank you, Your Honor. That is all
5 from me this afternoon. So, unless Your Honor has any
6 additional questions, I will hand the podium over to my
7 colleague, Mr. Nick Adzima.

8 THE COURT: All right, Mr. Nick Adzima.

9 MR. ADZIMA: Thank you, Ms. Smith. Good
10 afternoon, Your Honor. For the record, Nicholas Adzima of
11 Kirkland & Ellis, counsel to the Debtors. The next item
12 before the Court is Agenda Item Number 2, the final NOL
13 order. The Debtors filed the NOL motion at Docket Number 7
14 on the first day of these cases. The Court entered the
15 interim order at Docket Number 58. The Debtors filed a
16 revised proposed final order at Docket Number 205. Excuse
17 me -- at 207. This reflects a few non-substantive
18 modifications compared against the interim order and
19 includes language from both the SEC and the Committee.
20 Otherwise no formal objections were filed.

21 Unless Your Honor has any questions, the Debtors
22 respectfully request that the Court enter the revised final
23 order.

24 THE COURT: All right, are there -- excuse me --
25 are there any objections to this particular motion and

1 order? All right, it looked fine to me so submit your order
2 in final form and we'll enter it.

3 MR. ADZIMA: Thank you, Your Honor. Next, is the
4 final case management order, which is Item Number 5 on
5 today's agenda. The Debtors filed the case management
6 motion at Docket Number 12. The Court entered the interim
7 order at Docket Number 60. The Debtors filed a revised
8 proposed order at Docket Number 205.

9 The revised -- revised proposed final order
10 conforms to this Court's order in McClatchy and includes the
11 SEC's requested language. Otherwise, no formal objections
12 have been filed. Unless Your Honor has any questions, the
13 Debtors respectfully request that the Court enter the
14 revised final order.

15 THE COURT: All right. Are there any objections?
16 Very good. It looked fine to me. We'll enter it.

17 MR. ADZIMA: Thank you, Your Honor. That is it
18 from me. Unless Your Honor has any questions, I will cede
19 the podium to Ms. Okike.

20 THE COURT: All right.

21 MS. OKIKE: Thank you, Your Honor. Good
22 afternoon. Christine Okike of Kirkland & Ellis on behalf of
23 the Debtors. Your Honor, the next item, Number 13 on the
24 agenda is the Debtors' motion seeking authority for the
25 debtors to honor withdrawals of customer cash from the MCFBO

1 accounts, liquidate cryptocurrency from customer accounts
2 with a negative balance, sweep cash held in third-party
3 exchanges, conduct ordinary course reconciliation of
4 customer accounts and continue staking cryptocurrency, which
5 was filed at Docket Number 73.

6 A supplement to the motion was filed at Docket
7 Number 173. We also submitted a declaration by Steve
8 Ulrich, chief executive officer of the Debtors, in support
9 of the motion at Docket Number 192.

10 Importantly, Your Honor, MCB and the Committee are
11 supportive of the relief we are requesting today. And MCB
12 and the Committee each filed a statement in support of the
13 motion at Dockets Number 177 and 193, respectively. The
14 revised proposed order filed at Docket Number 225
15 incorporates comments from MCB, the Committee, the U.S.
16 Trustee and the SEC.

17 Your Honor, the Debtors submit that the cash held
18 in the MCFBL accounts is not property of the Debtors'
19 estates. That the cash belongs to the Debtors' customers,
20 and that customers should be permitted to withdraw their
21 cash in the ordinary course.

22 Your Honor, when you look at the FBO agreement
23 between Voyager and MCB, which we filed at Docket Number
24 173, and the customer agreement between Voyager and its
25 customers, which we filed at Docket Number 73, as well as

1 the historical practice of cash coming in and going out of
2 the MCFBO accounts, we believe it is clear that the Debtors
3 do not hold any legal or equitable interest in the case in
4 the MCFBO accounts and that such cash is held in trust for
5 customers.

6 Your Honor, under the terms of the FBO agreement,
7 MCB agrees to establish a custodial for the benefit or FBO
8 account at MCB. Section 3.4(a)(1) of the FBO agreement
9 provides that the FBO account holds all customer funds that
10 customers remit to MCB for payment to recipients. Section
11 3.6 of the FBO agreement provides that at no time shall
12 Voyager ever collect, hold or remit any customer funds.

13 Section 6.2 of the FBO agreement provides that MCB
14 is the holder of the FBO account through which the funds
15 sent by customers will be held. And Section 6.3 of the FBO
16 agreement provides that Voyager agrees that all customer
17 funds will be held in the FBO account, owned and controlled
18 solely by the bank.

19 Your Honor, the customer agreement aligns with the
20 FBO agreement in terms of the treatment of customer cash.
21 Section 5 of the customer agreement provides, in relevant
22 part, that customer understands and acknowledges that
23 customer may arrange to deposit United States dollars into
24 the account. Cash deposited into the customer's account is
25 maintained in an omnibus account at Metropolitan Commercial

1 Bank, which is a member of the Federal Deposit Insurance
2 Corporation. Voyager --

3 THE COURT: All right. Ms. Okike, I have to
4 interrupt you just one second. My battery is dying on the
5 phone that I'm using. I have to hang it up and I'll dial in
6 with a different telephone if you can just all indulge me.
7 I apologize for the interruption.

8 MS. OKIKE: No problem, Your Honor.

9 THE COURT: All right, I'll be right back.
10 I'm back, everybody. I apologize for that
11 interruption.

12 MS. OKIKE: Thank you, Your Honor. Your Honor,
13 Section 5(a) of the customer agreement provides in relevant
14 part that customer understands and acknowledges that
15 customer may arrange to deposit United States dollars into
16 the account. Cash deposited into the customer's account is
17 maintained in an omnibus account at Metropolitan Commercial
18 Bank, which is a member of the Federal Deposit Insurance
19 Corporation.

20 Voyager maintains an agreement with the bank
21 whereby the bank provides all services associated with the
22 movement of and holding of USBC -- sorry, of USB in
23 connection with the provision of each account. Therefore,
24 each customer is a customer of the bank.

25 Your Honor, the expectation and intent of all

1 relevant parties -- the Debtors, MCB, and the customers, was
2 that cash in the MCFBO accounts was held in trust for the
3 benefit of customers. Your Honor, I think it might be
4 helpful to walk through how cash historically flowed into
5 and out of the MCFBO accounts.

6 Your Honor, if a customer wishes to transact on
7 the Debtors' platform with cash they have to transfer funds
8 via either ACH, Automated Clearing House, or wire transfer
9 to the relevant for the benefit account held at MCB. And
10 there's one account for ACH transfers and one account for
11 wire transfers.

12 When a customer executes an order to buy
13 cryptocurrency assets on the Voyager app, the Debtors' order
14 management system notifies the applicable MCFBO account of
15 the transaction and MCB moves the requisite customer cash to
16 fund the transaction from the applicable MCFBO account to
17 the Debtors' Silvergate master operating account. The cash
18 is then transferred from the Debtors' Silvergate master
19 operating account to a third party exchange or market maker,
20 and the third party exchange or market maker delivers the
21 cryptocurrency to the Debtors through the Voyager app.
22 Voyager then holds the cryptocurrency through one of its
23 approved custodians.

24 Conversely, when a customer executes an order to
25 sell cryptocurrency on the Voyager app, the Debtors' order

1 management system instructs the Debtors' treasury management
2 system to transfer the cryptocurrency held with the Debtors'
3 third party custodian or self-custody solution to the third
4 party exchange or market maker. The third party exchange or
5 market maker then sells the cryptocurrency and deposits the
6 resulting cash in the Debtors' Silvergate master operating
7 account. That cash is then transferred from the Silvergate
8 master operating account to the MCFBO account.

9 Customers may also request to withdraw the cash
10 attributable to their cryptocurrency trades from the MCFBO
11 account. The customer's transfer request is conveyed
12 through the Voyager app to the -- to the Debtors' order
13 management system, which, in turn, instructs the requested
14 amount of cash to be withdrawn from the applicable MCFBO
15 account and subsequently transferred through a third-party
16 payment processor, UZIO, via ACH or wire transfer to the
17 customer's personal bank account.

18 Historically, the Debtors prefunded withdrawals
19 from their MC Bank master operating account into an account
20 held by UZIO to ensure that there were sufficient funds
21 available for customer withdrawal requests at any given
22 time. And the Debtors did not prefund withdrawals on a one-
23 to-one basis. Instead, they prefund a targeted amount based
24 on historical transaction trends and replenish that amount
25 as needed.

1 When the money is deposited into a customer's
2 personal bank account from UZIO, MC Bank then reconciles the
3 amount the Debtors prefunded and remits such amount back to
4 the Debtors' MC Bank master operating account from the MCFBO
5 account.

6 Your Honor, before the gates went up and the
7 platform went into freeze mode, there was a daily
8 reconciliation process that took place to ensure that the
9 cash in the MCFBO accounts accurately reflected customer
10 cash balances.

11 At approximately 8 p.m. Eastern Standard Time each
12 day, the Debtors and MCB would generate a report that
13 provided a snapshot of the customer balances in each MCFBO
14 account, including the ACH and wire transfer activity from
15 the day, and the balances owed to each customer based on
16 their respective trades that day. To ensure the cash in the
17 MCFBO accounts aligned with the balances from the customers'
18 daily activity, the Debtors and MCB would reconcile or true
19 up the MCFBO accounts each morning. If customers were owed
20 cash based on transactions on the Debtors' platform, the
21 Debtors would deposit funds from Voyager's MCB master
22 operating account into the MCFBO accounts. And if the
23 Debtors were owed cash from customers based on transactions
24 on the platform, MCB would transfer customer cash from the
25 MCFBO accounts to Voyager's MCB master operating account.

1 Importantly, at no point was there any comingling
2 of Voyager cash held in its MCB master operating account and
3 customer cash held in the MCFBO accounts. Your Honor, the
4 Debtors believe any cash in the MCFBO accounts, whether it
5 constitutes cash sent by a customer to the MCFBO accounts to
6 fund future transactions on the Debtors' platform or cash
7 sent by the Debtors to the MCFBO accounts upon a sale of
8 cryptocurrency on behalf of a customer does not constitute
9 property of the estate.

10 Our view is that once the cash hit the MCFBO
11 accounts, it was held by MCB in trust for the benefit of
12 customers. Because the cash was held in trust by MCB for
13 customers, we do not believe that it is property of the
14 estate. Your Honor, the Debtors and MCB have not engaged in
15 the daily reconciliation process since the bankruptcy
16 filing. Importantly, though, the Debtors are not owed any
17 amounts from the MCFBO accounts on account of customer
18 transactions that took place prior to the gates going up.
19 So, there is no concern, from our perspective, that there
20 are Debtor funds in the MCFBO accounts. Rather, as of
21 August 3, 2022, there is a deficit in customer cash in the
22 MCFBO accounts of approximately 2.85 million, which is due
23 to the ACH, or Automated Clearing House, chargeback issue we
24 noted at the first day hearing.

25 Your Honor may recall that an ACH chargeback

1 occurs when a customer seeks to reverse an ACH transfer to
2 the MCFBO account. In which case, under the rules of the
3 National Automated Clearing House Association, the
4 customer's bank removes the funds from the applicable MCFBO
5 account and credits their customer's personal bank account
6 for the original debited amount.

7 Immediately after the petition date, there was a
8 spike in ACH chargebacks, many of which the Debtors believe
9 may be unlawful attempts to reverse authorized transfers that
10 customers made to purchase cryptocurrency on the Debtor's
11 platform. The Debtors have aggressively moved to prevent
12 such improper ACH chargebacks by communicating with the ACH
13 banks and the customers involved pursuant to the authority
14 granted to the Debtors under the interim cash management
15 order. And we're happy to report that the rate of ACH
16 chargebacks has subsequently declined.

17 Under the terms of the FBO agreement and the ACH
18 origination agreement between MCB and the Debtors, the
19 Debtors are responsible for ensuring that funds sufficient
20 to satisfy ACH chargebacks are available in the MCFBO
21 account. Under Section 8.2(c) of the FBO agreement, we are
22 -- the Debtors are solely responsible for all expenses
23 associated with, and losses resulting from, over-limit
24 processing and customer or cardholder fraud.

25 In addition, Section 9 of the ACH origination

1 agreement provides that the Debtors shall at all times
2 maintain a balance of available funds sufficient to cover
3 its payment obligations under this ACH origination
4 agreement. In the event there are not sufficient funds
5 available in the account to cover company's obligations
6 under this agreement, company agrees -- which, in this case,
7 is the Debtors -- agrees that the bank may debit any account
8 maintained by the company with the bank or any affiliate of
9 the bank.

10 In addition, a designated reserve account exists
11 for chargeback -- chargebacks of ACH debits, and that's
12 Schedule C to the FBO agreement. This is a designated
13 reserve account -- this designated reserve account is a 24-
14 million earmarked portion of the Debtors' MCB master
15 operating account. Your Honor, the Debtors are seeking
16 authority to continue to perform under the MCB agreements in
17 the ordinary course of business, including continuing to
18 address ACH chargebacks through the ordinary course
19 reconciliation process that took place prepetition.

20 The Debtors believe that honoring their post-
21 petition obligations under the MCB agreements is ordinary
22 course and that they are authorized to do so under Section
23 363(1) of the Bankruptcy Code. However, if the Debtors'
24 continued performance under the MCB agreements is not
25 ordinary course, the Debtors believe the requested relief is

1 justified under Section 363(b) of the Bankruptcy Code.
2 Under Section 363(b), courts require a debtor to demonstrate
3 that a good business reason justifies the proposed use of
4 property.

5 The Debtors believe that there is a good business
6 reason to continue to perform under the MCB agreements,
7 including honoring their obligations to address ACH
8 chargebacks and any resulting deficiency in the applicable
9 MCFB account. Failure by the Debtors to properly reconcile
10 ACH chargebacks will result in a default under the MCB
11 agreements and put those agreements, which are central to
12 the Debtors' ability to operate the Voyager platform, at
13 risk.

14 Your Honor, since the petition date, MCB has
15 continued to perform its obligations under the MCB
16 agreements, and the Debtors are seeking to do the same
17 through this motion. Your Honor, the Debtors further
18 believe that the ability of customers to be able to withdraw
19 the full amount of their cash in the MCFBO account, as of
20 the petition date, is necessary to maintain customer
21 confidence in the Debtors' platform and, in turn, the
22 ultimate value of the Debtors' business.

23 Accordingly, we are seeking to continue to perform
24 under the MCB agreements in the ordinary course, including
25 satisfying any ACH chargebacks from the MCFBO account. Your

1 Honor, the relief the Debtors are requesting is
2 overwhelmingly supported by the Debtors' customer base. The
3 Debtors have over 1 million customers with active accounts
4 and received a single objection to the FBO motion. And,
5 Your Honor, Mr. Levitt is not objecting to the relief we are
6 seeking. Mr. Levitt objects to the FBO motion only to the
7 extent he is not treated as a cash customer entitled to
8 withdraw his cash from the MCFBO accounts.

9 Your Honor, if the motion is granted, all
10 customers who have cash in the MCFBO accounts, as of the
11 petition date, will be treated equally and will be allowed
12 to withdraw the full amount of their cash. Your Honor, the
13 facts are that on June 22nd, the Debtors determined to stop
14 accepting outbound wire requests and redirected customers to
15 their standard ACH withdrawal process, following the
16 Debtors' decision to reduce their daily withdrawal limit to
17 \$10,000. And this decision was reported by multiple news
18 sources.

19 That decision was also permitted by the customer
20 agreement, which provides that Voyager may refuse to allow a
21 USB -- USB withdrawal from a customer's account when it
22 deems it appropriate or necessarily in its sole discretion.
23 The customer agreement goes on to provide where the customer
24 makes a deposit into the account and effectuates one or more
25 transactions thereafter, subsequent withdrawal requests may

1 be subject to delays, holds or limits, as determined by
2 Voyager in its sole discretion.

3 A day later on June 23rd, Mr. Levitt sold his
4 bitcoin holdings of approximately 32.67 BTC and executed a
5 wire withdraw request for the applicable U.S. dollar amount
6 -- that was the amount of \$676,000 -- sorry, \$676,541.66.
7 On June 24th, Mr. Levitt canceled his outgoing wire request
8 and placed three separate orders to buy back the bitcoin he
9 sold. Two of the three orders were for 250,000 each, and
10 the third BTC order was for \$176,551.66.

11 One of the BTC orders for 250,000 was only
12 partially filled in the amount of 249,879.48. The remaining
13 120.52 -- sorry -- \$120.52 is processed in the Debtors'
14 system as a held order. The remainder of the BTC orders
15 were completed prior to the petition date. For the
16 partially unfilled order, the FBO motion, if approved, will
17 allow the Debtors to reconcile the order and either fulfill
18 or, in the case of Mr. Levitt's request, cancel it, in which
19 case such cash will be sent to the applicable MCFBO account
20 for withdrawal.

21 Your Honor, the Debtors made many difficult
22 decision in the days leading up to the petition date and
23 there are, unfortunately, many customers who are in the same
24 position as Mr. Levitt. But this case is no different than
25 any other case where creditors are stuck in whatever

1 position they were in when the Debtors decided to stop
2 making payments and to file for Chapter 11 protection.

3 Mr. Levitt may have a prepetition claim against
4 the Debtors for breach of contract or on some other theory,
5 but the Debtors cannot and are not seeking to liquidate
6 cryptocurrency so that Mr. Levitt can be considered a
7 customer with cash in the MCFBO account. Taking that action
8 would result in the preferential treatment of Mr. Levitt to
9 the detriment of other similarly situated creditors.

10 Your Honor, because Mr. Levitt does not oppose the
11 relief we are seeking today and Mr. Levitt's cross-motion
12 has been separately noticed for August 16th, the Debtors
13 respectfully request that his objection to the FBO motion be
14 overruled.

15 Your Honor, I'm happy to proceed with the rest of
16 the relief we're seeking in the motion or I can pause here
17 if Your Honor has questions or if there are other parties
18 who'd like to be heard with respect to the withdrawal of
19 customer funds.

20 THE COURT: I would like to take the different
21 components to this motion one by one. And I'd like to
22 separate the discussion of Mr. Levitt's motion from the
23 general discussion of permitting withdrawals from the FBO
24 account. And so, first, to discuss the motion to permit
25 withdrawals from the FBO accounts, okay?

1 MS. OKIKE: Yes, Your Honor.

2 THE COURT: Let me ask you some questions based on
3 your presentation. At various points you said that -- in
4 describing the flows of funds, that -- that MC Bank makes
5 transfers to various accounts of the Debtor?

6 MS. OKIKE: Yes.

7 THE COURT: If I understand -- if I understand
8 this arrangement correctly, all of the movements into and
9 out of the MC Bank account happen at the instruction of the
10 Debtors. It isn't that the Debtors send a request and MC
11 Bank then does something. The agreement basically allocates
12 to the Debtors, which are described as the agent of the
13 bank, the authority to do those things. So, is that right
14 or is that wrong?

15 MS. OKIKE: Your Honor, the Debtor and MCB work
16 closely together. But in terms of actually effectuating
17 actions at the MCB accounts, that is completely at MCB's
18 discretion.

19 THE COURT: All right. As a practical matter, from
20 day to day, it was the Debtor who gave the instructions and
21 actually moved the funds, wasn't it?

22 MS. OKIKE: Yes, Your Honor. The Debtors and MCB
23 would -- every day would reconcile the movement of cash
24 between the master operating account and the FBO accounts
25 based on customer trades that occurred the prior day.

1 THE COURT: It isn't as though I go to Citibank
2 and I say, please make a transfer, and somebody at Citibank
3 has to do something. The Debtors were doing all this.
4 Making the transfers and then reconciling on a daily basis
5 with, I guess, some checking and oversight by MC Bank but
6 it's not --

7 MS. OKIKE: Your Honor, we were -- we --
8 apologies, Your Honor. But the Debtors were not initiating
9 any movement of funds out of the MCFBO accounts. The
10 Debtors had to work with MCB to figure out, you know, that
11 there was accurate balances of customer cash in the MCBFBO
12 accounts, but we were not actually moving the cash.

13 THE COURT: So, let's walk through that then.
14 When -- when a customer wanted to buy cryptocurrency and
15 that called for money to be moved out of the FBO account, I
16 presume the Debtor would check to see if the customer had
17 money. And then the Debtor would issue some kind of a
18 transfer request or authorization. And then -- what exactly
19 happened then? Who had to act on that in order for the
20 transfer to happen?

21 MS. OKIKE: MCB would need to act on that.

22 THE COURT: And who at MCB and in what way?

23 MS. OKIKE: Your Honor, I know that counsel for
24 MCB is on the line, but MCB has obviously a whole team of
25 professionals that administer their bank accounts. And so

1 there's a team that works very closely with the Voyager
2 treasury management team to reconcile transactions that are
3 occurring. So, there would be this daily reconciliation
4 process, there would be agreement on --

5 THE COURT: I'm not asking about the next day
6 reconciliation process; I'm asking about as each trade is
7 placed, what was the role at MCB and did its employees
8 receive requests and act on them, or was all this done
9 basically by Voyager subject to a reconciliation the next
10 day? Because the banks --

11 MS. OKIKE: Understood, Your Honor. The -- the
12 transfers were done by MCB.

13 THE COURT: Okay. Can the bank confirm exactly
14 how that worked? Is the bank's counsel on the phone?

15 MS. WOLF: I'm sorry, Your Honor. I'm actually
16 conferring... This is Amy Wolf from Wachtell Lipton Rosen &
17 Katz on behalf of MCB, and I was just conferring with other
18 counsel in my conference room to make sure that we answer
19 your question accurately.

20 As I understand it -- one thing I understand for
21 certain is that all of the instructions had to come from
22 Voyager. We had no contact -- the bank had no contact and
23 no knowledge really of the individual customers. So, as I
24 understand it, the customer would go to the app and -- and
25 seek a withdrawal, and an instruction would go to the bank.

1 Now, given that the bank controlled the account, now I'm
2 just -- sort of a matter of common sense, it has to be the
3 case that somebody at the bank pushed the button to cause a
4 transfer since the bank held the funds.

5 But I think that's sort of the extent of the
6 bank's function in regard -- you know, the bank was not
7 interacting with the customer and really had no -- as I
8 said, had no knowledge of the specific customer, but got an
9 instruction that then caused it to move funds. I'm just
10 going to look -- I apologize, Your Honor. I have some
11 banking lawyers with me and I want to make sure that they
12 think what I'm seeing is -- the best we can do. Okay, thank
13 you.

14 THE COURT: All right. So, you say the control of
15 the account was with Voyager. That Voyager issued
16 instructions and if somebody at the bank had to push a
17 button, they followed those instructions and it was all
18 subject to a daily reconciliation. The bank was not
19 receiving requests directly from customers, was not acting
20 at the instructions of customers; it was just doing what
21 Voyager told it to do in this account, correct?

22 MS. WOLF: Yes, Your Honor.

23 THE COURT: All right. And were any subaccounts
24 set up for individual customers, or was there just the two
25 separate pooled accounts, one for wire transfers and one for

1 ACH transfers?

2 MS. WOLF: There were -- there were not separate
3 customer accounts. There were just -- there were just the
4 (indiscernible). These are funds held for the benefit of
5 Voyager customers generally.

6 THE COURT: And when a customer wanted to remove
7 money from the account, was there any way for the customer
8 to contact the bank directly to do that, or did it have to
9 go through Voyager?

10 MS. WOLF: My understanding is all the
11 instructions came through Voyager. There was no individual
12 relationship between the customer and the bank.

13 THE COURT: For the bank I have some questions.
14 The bank agreements reference a Program, with a capital P,
15 and far more generally to formally accept the Programs of
16 the bank as being governed by this agreement. Is there some
17 document I haven't seen that describes the Program that is
18 involved here? Where is that?

19 MS. WOLF: I don't think there is anything that
20 you haven't seen. We -- we made sure when Kirkland
21 requested to make -- this request had been made from Your
22 Honor. We believe you have everything that we -- that we
23 could find and everything that we have that governs this
24 relationship. So, the reference, I don't, frankly, entirely
25 understand what the reference to Program is either but I

1 don't think -- I don't think it's something different from
2 what -- you know, that there's something else going on other
3 than what we've now been talking about in terms of the
4 functioning of the bank for Voyager.

5 THE COURT: Okay. And the Voyager customer
6 agreement says that each customer is a customer of the bank.
7 Does the bank agree with that?

8 MS. WOLF: That's not our statement and I -- I
9 think we probably don't agree with it. Because, again, we
10 have no individual relationship with the customers. We
11 don't know who the customers are. We are holding their
12 funds but that's -- that's the extent of it. And does that
13 make the person a customer of the bank? Again, there's no
14 account agreement between the customer and the bank, and
15 really no knowledge in our part of particular customers.

16 THE COURT: All right. And do you agree with the
17 statement that each separate customer is FDIC-insured in the
18 event of a failure of MCB?

19 MS. WOLF: That -- that -- it is my understanding
20 that that is a correct statement of the law, that there is -
21 - and here I'm definitely looking at my colleagues -- but
22 there's a pass-through concept that allows each customer
23 Voyager to take advantage of the \$250,000 level of insurance
24 in the event of a bank failure. Even though there is just
25 this one account and one might think it would just have

1 \$250,000 of insurance, the law does permit the insurance to
2 pass through such that each customer would be protected up
3 to \$250,000.

4 THE COURT: Okay. The FBO agreement in Paragraph
5 3.6 says that the client, meaning Voyager, would not collect
6 or hold any customer program funds. I didn't see a
7 definition of customer program funds. Is there one
8 somewhere? Did I just miss it?

9 MS. WOLF: I don't believe so. I'm not aware of
10 there being. Again, I'm not aware of -- I really don't know
11 what this word Program was intended to mean in this
12 agreement. It's just not clear. And I'm not aware that
13 there is -- again, that there is anything else going on in
14 the relationship.

15 THE COURT: I appreciate your candor in that
16 regard, but that's -- I hope you understand why I asked the
17 questions because there are all these capitalized terms that
18 usually have definitions somewhere and I didn't find
19 definitions anywhere.

20 MS. WOLF: Yes.

21 THE COURT: Paragraph -- Paragraph 6.2 of the FBO
22 agreement says that the bank will be the "holder" of the
23 account. Just to make sure I understand the full
24 significance of that, from a banking point of view, what
25 does it mean to say that the bank is the holder?

1 MS. WOLF: We serve as a depository. The function
2 is to -- to hold their funds and, you know -- I think that's
3 -- I don't think there's anything more to it than that.

4 THE COURT: Are there any specific rules and
5 regulations in the banking industry that govern the FBO
6 accounts?

7 MS. WOLF: Limited. There are -- there are some.
8 I believe that the pass-through concept that we discussed a
9 moment ago is sort of the central way in which there are
10 rules and regs that govern FBO accounts. I'm asking exactly
11 Your Honor's question of my colleagues and there isn't
12 something that says, banks can establish accounts that are
13 for the benefit of, and these are the terms that apply to
14 that. There's not -- there's much less there than I was
15 hoping. And, as I said, the one -- the one place is on this
16 FDIC insurance issue.

17 THE COURT: Okay. And, in general, in the banking
18 industry, what is it understood to mean if someone --
19 something is designated as an FBO account?

20 MS. SPAZIANI: Hi, this is Rosemary Spaziani from
21 Wachtell as well. So, in the industry the expectation, when
22 you have a for benefit of account, is essentially the bank
23 is responsible for the customer funds, and a third party, in
24 this case Voyager, is responsible for the recordkeeping.
25 So, they are the direct interface with the customers. They

1 have the obligation to comply with certain recordkeeping
2 requirements and to be able to provide the bank, within a
3 very short period, information on the customers in the event
4 that there's ever going -- in the even there's ever a bank
5 failure. And that's how the FDIC thinks about the FBO
6 accounts.

7 THE COURT: Okay. The agreements that were
8 provided have various provisions that entitle the bank to
9 indemnities or setoffs as to obligations owed by Voyager and
10 that further provide that the bank can file a UCC-1
11 financing statement to evidence its secured interest. Did
12 the bank file such UCC-1 file -- financing statement?

13 MS. WOLF: Not to my knowledge, Your Honor. I'm
14 not sure why one would, because the bank does have
15 possession of the accounts, which is how one would protect.

16 THE COURT: Right. Okay. The agreement provided
17 for it, that's why I asked.

18 MS. WOLF: Yes.

19 THE COURT: Has the bank had -- has the bank
20 asserted any offset rights or indemnity rights as to the
21 funds held in the FBO accounts themselves?

22 MS. WOLF: No. I mean, first of all, the bank is
23 not owed anything. The bank isn't a creditor. Hopefully,
24 never will be. So, there's nothing to -- there's no reason
25 for a setoff. And the funds in the account we also do not

1 believe to be Voyager's funds. We would -- we would look to
2 the reserve account, which is provided for in the FBO
3 agreement and is clearly Voyager funds, in the -- in the
4 event that we ended up with a claim. But we do not have a
5 claim and hope not to have a claim because we're just
6 administering someone else's funds and Voyager would like to
7 do its side of -- what they've always done, which is to
8 ensure that the customer's funds are there.

9 The reason that there's a potential --

10 THE COURT: (indiscernible)

11 MS. WOLF: I'm sorry, Your Honor. Go ahead.

12 THE COURT: No, you go ahead and finish. I want
13 to make sure you're finished.

14 MS. WOLF: I just -- the initial -- the initial
15 hit to the account caused by these chargebacks that happily
16 have pretty much fallen away, I believe, because of the way
17 the ACH system works, they caused a hit to the funds in the
18 FBO account. And it has always been the practice -- because
19 there always are, as I understand it, chargebacks in the
20 normal course -- that in this daily reconciliation, Voyager
21 would make sure that the customer -- the amount of customer
22 funds that were supposed to be in the account remained in
23 the account. And if they had -- you know, if they had to
24 make a transfer into the account in order to ensure that,
25 they did.

1 THE COURT: All right. On the chargebacks, the
2 (indiscernible) provide that if there's a deficit in the FBO
3 account, that Voyager needs to make that up. And part of
4 the motion -- a different part of the motion is a request
5 that that particular provision be enforced. Is that
6 correct?

7 MS. WOLF: Yes, Your Honor.

8 THE COURT: That part of it seems to me to involve
9 potentially a claim by you against Voyager. Is that -- I
10 suppose if every customer withdrew every penny of cash, that
11 might leave you short. But am I right? Is that essentially
12 just the bank asking Voyager to make up that particular
13 deficit for the benefit of the bank?

14 MS. WOLF: I don't believe so because it is the
15 account that has the deficit. As Your Honor knows, for
16 there ever to be an issue as to what would happen if there
17 were inadequate funds to cover all customer withdrawals, you
18 know, then -- then that -- you know, then that creates the
19 possibility -- and we don't know the answer, to be perfectly
20 candid, what happens in that circumstance. But at the
21 moment, the bank has no claim. The bank is not out any
22 money, and it is the account that requires replenishment.
23 It is not a bank -- I do not believe that it is a claim of
24 the bank.

25 It is a claim of the account that, at the moment,

1 may be short some customer funds as a result of the -- the
2 chargebacks. And it was always anticipated that that could
3 happen and it always did happen that the account would be
4 made whole. And then Voyager would do things like sell
5 cryptocurrency if it was -- you know, if it was actually
6 having to -- having to deal with chargebacks. But it was
7 always the process that this account is -- we are simply
8 holding it and it has to have enough in it so that it can be
9 the customers.

10 I do not believe that the bank has a claim.
11 Certainly not at this time. So, I do not think that the
12 relief that is being asked for is for Voyager to be
13 effectively making a payment to the bank.

14 THE COURT: I appreciate that. Thank you very
15 much, that's very helpful. Ms. Okike, just to make sure I
16 understand. In this motion, you're seeking to allow
17 customers to withdraw funds from the FBO accounts --
18 withdraw cash? You're seeking certain permission to do
19 certain kinds of things, staking, dealing with open
20 transactions, things like that; you're not actually asking
21 to go back and start up a whole platform of buying and
22 trading?

23 MS. OKIKE: No, Your Honor. No, Your Honor.
24 We're simply seeking to allow customers to withdraw cash
25 from the MCFBO accounts. And there's -- sorry, I should just

1 mention, Your Honor, there is a way to allow that to happen
2 through the app without opening the other functions.

3 THE COURT: Okay. The Debtors' position, as I
4 understand it, is that cryptocurrency is owned by the
5 Debtors and customers only with general unsecured claims
6 against the Debtors. I presume that some cryptocurrency
7 sales occurred during the 90 days that preceded the
8 commencement of the Debtors' cases. If the Debtors made
9 cash payments that are currently sitting in the FBO accounts
10 in satisfaction of those particular obligations, wouldn't
11 those potentially be preferences?

12 MS. OKIKE: Yes. Your Honor, obviously, we do
13 believe cryptocurrency on the platform is property of the
14 estate. And to the extent that we sold crypto on behalf of
15 customers in the 90 days prior to the petition date, one
16 could potentially argue that those transfers of cash to the
17 FBO accounts are preferences. However, you know, we believe
18 there are pretty viable defenses to any preference claims,
19 including that such transfers were made in the ordinary
20 course of building and according to ordinary business terms.

21 I think there's arguments on both sides but,
22 importantly, I don't think that issue needs to be decided
23 today. And we've actually included a provision in the order
24 that, you know, the Debtors' rights under Chapter 5 are not
25 being impacted in any way by the relief we are seeking

1 today. And that was at the request of the Committee, which
2 makes -- makes clear that to the extent -- at some point in
3 this case, the Debtors were to determine that it made sense
4 to pursue potential preference actions. We have... Sorry,
5 I'm hearing an echo. We have maintained that right.

6 THE COURT: Okay. I didn't see anything in the
7 motion or in the order that would bar a preference claim.
8 Obviously, if funds are sitting there currently in the FBO
9 accounts and are released to customers, then that would be
10 an additional obstacle to the enforcement of a preference
11 claim, if one were to be pursued. I just wanted to know
12 from a business perspective for both the Debtor and the
13 Committee if they have considered that issue and still
14 believe this makes sense.

15 MR. AZMAN: Your Honor, it's Darren Azman from the
16 Committee. I don't want to interrupt Ms. Okike's
17 presentation, but agreed, it's an issue identified not only
18 by the professionals, but actually by committee members.
19 And we haven't necessarily analyzed the issue, but we did
20 want to preserve it and make sure that we weren't losing any
21 potential rights that either the Debtor or the Committee
22 would want to preserve for the future.

23 THE COURT: But risk that if such a claim is
24 pursued, it would be harder to enforce than it otherwise
25 would have, and that doesn't change the assessment of

1 whether these funds would be released or not.

2 MR. AZMAN: No, not from the Committee's
3 perspective.

4 THE COURT: Okay. Thank you. The only other
5 question I have for both the bank and the Debtor is if the
6 intent here was to establish a trust to deal with the trust,
7 why don't the bank account and the customer agreements say
8 that more clearly? Why don't they simply say that customer
9 funds are held in trust and do not belong to Voyager?

10 MS. OKIKE: Your Honor, this is Christine Okike on
11 behalf of the Debtors. Your Honor, I agree. I think the
12 agreements could be more clearly -- could have been drafted
13 more clearly. That being said, you know, I do believe for
14 the benefit is akin to establishing a trust relationship,
15 right? You're holding funds for the benefit of another.
16 And so, although I agree with you that the agreements, you
17 know, could be clearer in terms of stating that a trust
18 relationship was established, we believe that when you
19 evaluate the agreements together, you know, that
20 relationship does exist notwithstanding that it wasn't
21 explicitly stated in the documents.

22 And, Your Honor, I would like to clarify just one
23 point which relates to something Ms. Wolf said earlier,
24 which -- when, you know she said that she doesn't believe
25 the customers are customers of the bank. I would just like

1 to point out, you know, Section Five of the customer
2 agreement, which MCB signed off of, explicitly provides that
3 each customer is a customer of the bank. That is what their
4 agreement says, that is what MCB signed off on, and that is
5 our view. And I wanted to make it explicitly clear that we
6 do not agree that the customers are not customers of the
7 bank.

8 THE COURT: Okay. All right.

9 MS. WOLF: Your Honor, I mean, I think we'll leave
10 that for another day. Hopefully, no day -- a day that will
11 not need to come, you know, that disagreement. But in
12 response to Your Honor's question about why doesn't it say
13 that -- again, I would turn it over in a moment to my
14 colleague, who knows quite a bit more about these agreements
15 than I do. But I would say that I think when people use the
16 language as held in trust, I think that just -- I mean, you
17 know, I think that, you know -- I frankly think they're
18 using the language loosely. I don't believe that this --
19 that we're a trustee and that we have -- I mean, that would
20 have entailed -- that would make us a fiduciary. It would
21 impose various obligations that it's not clear to me were
22 intended to be -- are taken on in this circumstance. We
23 have whatever duties we have by virtue of holding people's
24 funds. And I don't know if, you know, it would have been
25 better drafting to call it a trust situation if it really

1 was not intended to be.

2 And with that, Ms. Spaziani, do you have anything
3 to add on the nature of the FBO account?

4 ROSEMARY SPAZIANI: The FBO usage is really --
5 this is a very common type of account and established from
6 an FDIC perspective. So, referring to it as a for-benefit-
7 of account by definition under the FDIC rules, it is treated
8 a very specific way. So, the fact that there wasn't any
9 additional language associated with it wouldn't undermine
10 its treatment from a banking perspective.

11 THE COURT: And when you say it's treated in a
12 very specific way, can you explain that better?

13 ROSEMARY SPAZIANI: That's the -- oh, sorry, Your
14 Honor. Go ahead.

15 THE COURT: No, go ahead. Just explain that.

16 MS. SPAZIANI: So, an FBO accounting intent is
17 essentially that if it's a third party, there's an account
18 that's being opened. The third party is the one who is in
19 direct relationship with the bank and the account is for the
20 benefit of its customers. And for the benefit of the
21 customers, as we noted, is the third party is responsible
22 for the recordkeeping. But in establishing this account and
23 ensuring that there are no other -- so, that the owner of
24 the third party, so here Voyager, you know, specifically
25 there's no comingled funds. These are all customer funds.

1 They have the recordkeeping. It's established in a way such
2 that there's able to be the pass-through insurance so that
3 all of the underlying customers are able to have the full
4 insurance up to the FDIC limits. Instead of the account
5 itself being subject to the 250, each of the underlying
6 customers is able to have the insurance up to those limits.

7 And again, they're indirect. It's an indirect
8 relationship. The bank does not have the information on all
9 of the underlying customers. So, there is a reliance on
10 Voyager for that information.

11 THE COURT: Okay. And again, putting aside Mr.
12 Levitt's issue, which I'm going to deal with separately, is
13 there anybody else who wishes to be heard on the motion to
14 the extent it seeks to allow customers to make withdrawals
15 from the FBO account?

16 MR. AZMAN: Your Honor, it's Darren Azman for the
17 Committee. I'll be brief.

18 Your Honor, the Committee strongly supports the
19 requested relief. We want to see cash and crypto returned
20 or distributed to customers as soon as possible. Of course,
21 that needs to happen in a way that is consistent with the
22 Bankruptcy Code. And we conducted an extensive analysis
23 over the last two weeks and worked with the Debtors to
24 understand in detail how the FBO accounts operated, both by
25 design, including how the agreements were set up, and in

1 practice.

2 And the Committee agrees with the Debtors'
3 conclusion that the cash in the FBO accounts is not property
4 of the estate. We view the relief in the motion as low-
5 hanging fruit in the sense that we can get \$270 million back
6 to customers less than a month into this case. That is
7 rare.

8 So again, we support the Debtors on this motion
9 and would urge you to allow the Debtors to return that cash
10 to customers.

11 In terms of the clarity of the agreement, I
12 believe that the FDIC actually has the definition for
13 custodial accounts and FBO accounts, and it specifically
14 says that a deposit account was established for the benefit
15 of a single owner or a comingled account for the benefit of
16 multiple owners. And importantly, it says that the
17 individual or entity with the account does not have an
18 ownership interest in the account. And that would be
19 Voyager here.

20 And so, as Wachtell -- counsel from Wachtell just
21 told you, Your Honor, this is not a -- FBO accounts are not
22 unique to the crypto industry. They've been around for a
23 very long time and they operate in a number of different
24 capacities. But it's a well-known structure that is used
25 for one entity to hold cash on behalf of another in a trust

1 relationship. And we believe that that is not only the
2 intention here by the parties, but that is actually what was
3 done in practice. And so, for those reasons, we'd ask that
4 Your Honor enter the order.

5 Your Honor, I don't know if you're also asking for
6 comments on the staking portion of the motion. I have just
7 two brief comments on that. But if you're just looking for
8 comments on the FBO portion, then I can hold.

9 THE COURT: Just the FBO portion. We'll get to
10 the staking issue in a moment.

11 MR. AZMAN: Okay. Thank you.

12 THE COURT: All right. Anybody else wish to be
13 heard on the FBO portion?

14 MR. ROUSE: Christopher Rouse, customer here. I
15 want to second that statement by the Committee. I have cash
16 being held in the FBO, and I'd like it back. I have a
17 letter from MCB. When I filed my complaint, they reiterated
18 that I do hold this cash in that account in their letter to
19 me. And clearly, Voyager had some part in relaying that
20 information to MCB, that my cash that was reflected in my
21 Voyager account was in fact being held in the FBO account.

22 That's all. Thank you.

23 THE COURT: All right. Anybody else?

24 MS. LITTLE: (Indiscernible) --

25 MR. SINGER: Jeb Singer for Matthew Levitt. I

1 assume you're not asking for my presentation just yet.

2 THE COURT: Not yet, Mr. Levitt, no.

3 MR. SINGER: Mr. Singer. Sorry.

4 THE COURT: Okay. All right. I hear no further
5 comments. Ordinarily --

6 MS. LITTLE: Can you hear me?

7 THE COURT: Oh, I'm sorry. Go ahead.

8 MS. LITTLE: This is Ginger Little. I do have a
9 question as a consumer. I do have cash and digital in the
10 accounts. When we were made to put the money in, we had to
11 change it from USD to USDC. Is that the same? Is that what
12 we're talking about?

13 MS. OKIKE: Your Honor, this is Christine Okike on
14 behalf of the Debtors. I am happy to address that.

15 USDC is a type of cryptocurrency, a type of coin.
16 And so that is not being discussed or adjudicated on in the
17 context of the release of cash that's being requested by the
18 Debtors.

19 MS. LITTLE: Then why were we forced to do that in
20 order to get any interest?

21 MS. OKIKE: I'm not sure what question you're
22 asking. But in terms of -- USDC is a type of
23 cryptocurrency. Pursuant to this motion, we are only
24 seeking to authorize the debtors to allow customers to
25 withdraw cash from the FBO account. So there's nothing

1 before the Court today with respect to the USDC --

2 MS. LITTLE: But the only reason we were allowed
3 to put -- that we got interest which would entice you to put
4 your money in there was that we had to change it from USD to
5 USDC. And we were never told that wasn't the same as cash.
6 We told them it had to be -- we were told that it had to be
7 listed that way in order to get interest for the monies that
8 we put in there as an investment. But you're saying that if
9 it says USDC, which we were forced to do, we're basically
10 SOL?

11 MS. OKIKE: No, that's not what we're saying. So,
12 the cryptocurrency that the Debtors are holding, you know,
13 we're not seeking today obviously to make distributions of
14 cryptocurrency. But as we've talked about, we are engaged
15 in an active marketing and sale process, and our intention
16 is to, you know, have coin obviously redistributed back to
17 customers as soon as possible. But we have to kind of run
18 that process in order to make sure that we're maximizing
19 value for all customers.

20 THE COURT: All right.

21 MS. LITTLE: Well, it just doesn't make sense
22 because we were forced to do it. That's the only --

23 THE COURT: Well, the motion before me doesn't
24 deal with that particular situation or that --

25 MS. LITTLE: Okay. I guess what I'm trying to say

1 is we were not told it was a crypto. We were told it had to
2 go from USD to USDC. And the way it was explained to me,
3 that it was U.S. dollars, that they just had to put it in
4 that form in order to pay us interest.

5 THE COURT: All right. But the --

6 MS. LITTLE: Okay. No, I understand
7 (indiscernible).

8 THE COURT: If what you actually have in your plan
9 -- if what you actually have in your account is not cash in
10 the FBO account at MCB but instead is something else, a
11 cryptocurrency, then it doesn't matter whether that is
12 because you wanted it that way, you were asked to do it that
13 way, you were told to do it that way, you were lied to, they
14 made you do it that way. It means you have a different kind
15 of a claim. It means that you are claiming rights as to
16 something that's different from the cash in the FBO account.
17 And the only motion before me right now is for a ruling as
18 to whether the cash that is actually in the FBO account is
19 property that belongs directly to the customers, that was
20 not property of the estate. Okay?

21 MS. LITTLE: Okay. Thank you, sir.

22 THE COURT: All right.

23 MR. GRAFF: Your Honor, it might be appropriate
24 for me to make one comment at this point. My name is Steven
25 Graff. I am a lawyer at the Law Firm of Aird & Berlis in

1 Toronto. Our firm, along with a class action firm named
2 Siskins, represents or is seeking to gain representation on
3 behalf of the shareholders of the Canadian entity, Voyager
4 Digital LTD.

5 At this point, we have not been able to, because
6 of the position that we're in to engage U.S. counsel,
7 currently we have no U.S. counsel on the phone on behalf of
8 that stakeholder group. And in no way am I opposing the
9 relief that is being sought last by the company that has
10 been put before you. But we would ask, of course, that you
11 give consideration to all of the submissions that have been
12 made, which undoubtedly you will, and that you review all of
13 the documentation which both the Wachtell firm as well as
14 Kirkland has put before you concerning this issue of
15 ownership when rendering your decision, because it will be
16 something that will in a consequential manner have
17 potentially a large impact upon the shareholders at the
18 parent company level between the parent company level.

19 Thank you, Your Honor. And I'm happy to answer
20 any questions you have. I know I have no practice standing
21 before this Court, so I make my comment to you with
22 knowledge of that fact.

23 THE COURT: All right. Anybody else? All right.

24 Here's my ruling. Ordinarily on an issue where
25 both the bank and the debtor agreed as to whose funds these

1 are with no formal objection, I wouldn't have spent quite so
2 much time looking at it.

3 My unease in this particular case is that I am in
4 effect being asked to issue a declaratory judgment and I
5 don't really have anybody on the opposite side. If anybody
6 is going to be adversely affected by this, I suppose it
7 would be other general unsecured creditors who might, if
8 this were property of the estate, wind up getting a smaller
9 recovery.

10 If there were more creditor claims, then I might
11 have felt more comfortable that those people either were
12 heard or they might even agree with it. But that's the
13 reason why I asked so many questions, is that everybody is
14 going to look at this, everybody is going to look at the
15 ruling. And I feel like I'm ruling on a litigation where
16 the other side, or whoever might be on the other side, isn't
17 really there.

18 With that being said, it appears to me from all of
19 the presentations that have been made, the uncontroverted
20 presentations, and the statements in the bank agreement and
21 in the Customer Agreement, more particularly Paragraph 5 of
22 the Customer Agreement, which states explicitly that each
23 customer would be regarded as a customer of the bank insofar
24 as the cash is concerned, the FBO agreement, Paragraph 3.6,
25 which says that at no time shall client every collect, hold,

1 or remit any customer program funds, and Paragraph 6.2,
2 which says that the bank shall be the holder of the FBO
3 account, plus the uncontroverted submissions that have been
4 made to me as to what it means to have an FBO account in
5 general, I find that on the basis of all that, that there is
6 a sufficient basis for the Debtors' position that these are
7 not Debtors' funds, not the estate's funds, and that
8 customers should be permitted to make withdrawals. I assume
9 that's going to be subject to whatever reconciliations and
10 whatever dispute mechanisms ordinarily would apply in the
11 event that there are disputes as to how much money a
12 customer has in the account. But as to the account
13 withdrawals being permitted, that seems appropriate.

14 I would just caution if anybody wants to use this
15 as a ruling in another case, just take to heart my notation
16 that nobody was really here to argue the other side. So, I
17 tried to think of what arguments might be applicable.
18 Perhaps there are other arguments. It didn't occur to me.
19 But that's kind of an unusual situation here.

20 MR. GRAFF: Your Honor, it's Steven Graff again.
21 And I don't mean to interrupt you. Just to clarify one
22 point because I know I mentioned that we act for a number of
23 the shareholders of the parent company, VDL, the Canadian
24 entity, the public entity. But you should be aware that we
25 have been requesting both Canadian counsel on behalf of the

1 Debtors as well as from the information officer appointed
2 under the (indiscernible) in Canada, as well as from
3 Kirkland, information about the intercorporate indebtedness
4 as between the parent Canadian company and the U.S.
5 operating companies that operated the trading platform. And
6 that information as to the quantum of that intercorporate
7 indebtedness, which of course is incredibly important for
8 the Canadian shareholder base, that information has not yet
9 been provided to us.

10 So, we do not know whether the intercorporate
11 indebtedness in favor of the Canadian parent is \$5 million
12 or \$250 million. And obviously, the ruling could have a
13 large impact potentially, this ruling that is, on the
14 ultimate recovery and distribution to the Canadian entity
15 absent any substantive -- that substantive consolidation
16 order.

17 So, again, I just wanted you to appreciate the
18 position from which we come. And I know you're in a
19 difficult position.

20 THE COURT: Yeah. All right. I've made my
21 ruling. I am not going to hold it up based on speculation
22 that there might be another larger unsecured creditor and
23 that such creditor might have arguments to make, that I
24 haven't -- haven't made with me today. So, I have made my
25 ruling just subject to that caution. Okay?

1 MR. GRAFF: Thank you, Your Honor.

2 THE COURT: Now, as to Mr. Levitt's motion, Mr.
3 Levitt, if I understand correctly, your argument is that you
4 think you should have cash and that you should have been
5 given cash, but what you actually hold right now is Bitcoin
6 or a different cryptocurrency. Is that correct?

7 MR. LEVITT: So, I'm going to let Jeb Singer talk
8 for me, sir. But the whole basis of the reason that I've
9 gone to great lengths to provide you factual evidence of my
10 situation is I invested funds, and then as my right, sold
11 Bitcoin and requested a wire withdrawal. And that was
12 received by the bank prior to their 8:00 p.m. sweep and they
13 did not send me my funds. They did not provide me any
14 fiduciary information. They did not provide me any
15 information whatsoever.

16 The only reason I am in the situation I'm in is
17 because this company blatantly acted with absolutely no
18 regard for someone who was asking for a wire immediately of
19 their life savings. And if you were me, sir, and you've
20 been lied to multiple times through all of their press
21 releases, I may -- may I ask you, what would you have done
22 if the only way you knew you could redeem any funds was to
23 buy back Bitcoin and withdraw in kind? The only way to
24 recover any of your life savings, what would you have done,
25 sir, stayed in cash and hope that the same company would

1 treat you right? I didn't know that the FBO account ruling
2 you were going to make to separate funds was absolutely
3 clear. If I had, I would never have bought it back.

4 I've shown through all of my evidence that I
5 repeatedly asked this company to provide me clarity. I
6 repeatedly asked for them to send a wire. And there was
7 nothing in their user agreement that states anything about
8 wire transactions. They were not a bank. When they said
9 they limited funds from \$25,000 to \$10,000 on the 23rd of
10 June, that could not have referenced wires.

11 It's not in their agreement. If you really want
12 to uphold the law, that this agreement -- which is
13 absolutely farcical to me. But if you do, which is your
14 right, then my rights is that there is no reference to
15 wires. I made a wire request to a fiduciary. And if this
16 is not approved, then it means that any fiduciary, public
17 company, people holding customer funds, may at their own
18 leisure hold ransom people's money.

19 So, my question to you, sir, is what would you
20 have done based on my information, and is it not right that
21 I should be treated the same? If you're going to honor a
22 withdrawal of a cash customer from this date, why is it that
23 I cannot have my withdrawal honored as I requested, a bank
24 wire directly one week before, when these same people knew,
25 they were going to freeze the platform. They've hired

1 Kirkland and Ellis; they knew what they were going to do.
2 They ignored my bank wire order. And that is not equitable,
3 sir.

4 If you're going to make an equitable ruling, which
5 is the law, then you must allow the fact that what I did was
6 under pure duress, and you must allow me to be treated as a
7 cash customer. Thank you. Please treat me fairly.

8 THE COURT: All right. Does your counsel have
9 anything?

10 MR. SINGER: Your Honor, Jeb Singer for Mr.
11 Levitt. Thank you for letting me be heard. Pleasure to be
12 in your courtroom.

13 Paragraph 5C of the User Agreement states plainly
14 that in an insolvency proceeding, you have to look at the
15 facts of each individual customer. Okay?

16 Mr. Levitt has very unique facts here. Okay? And
17 there's a couple of key words here. He's a cash customer
18 requesting that his wire withdrawal be honored and that he
19 be treated the same, that they be held accountable --

20 THE COURT: Let me interrupt you, Counsel. Mr.
21 Levitt's rights in bankruptcy are determined through the
22 Bankruptcy Code, not by his contract.

23 So, what is there to support your contention that
24 Mr. Levitt actually owns cash that is currently held by the
25 Debtor? Aren't you instead asking me to sort of undo a

1 transaction that happened before on the grounds that Mr.
2 Levitt believes he was defrauded into doing it?
3 (Indiscernible) --

4 MR. SINGER: He absolutely was -- first of all, I
5 think there's no -- go ahead, Your Honor.

6 THE COURT: From a bankruptcy perspective, why
7 isn't that just a regular creditor claim? I don't mean to
8 demean it and I don't mean to say that it's right or wrong.
9 But as I tried to say before, the people on the phone who
10 aren't lawyers probably don't understand. It is not my job
11 or my power today to just say that you can have claims, you
12 can have property just because I think it's fair. What's
13 deemed to be fair in the Bankruptcy Code is that property is
14 divided up equally among creditors. And if you think that
15 you have something other than an ownership interest, a
16 creditor claim, if you think a contract was breached, if you
17 think you were defrauded, if you think something was stolen
18 from you, those are creditor claims. They're not claims
19 that I can separate out from other creditor claims in the
20 bankruptcy context.

21 And the point of the FBO motion was that cash, the
22 actual cash that is there, according to the agreement with
23 the bank and the customers, doesn't belong to the Debtors.

24 So, you may think that you should have been in the
25 position of being a cash holder on behalf of Mr. Levitt.

1 You may feel very angry. And I don't know the underlying
2 facts. But maybe you're right to be angry. You may be well
3 be. But all I can do in this context is at this stage of
4 the case is make rulings as to whether the property that is
5 actually held belongs to you or to the Debtor. And to the
6 extent you want relief because of wrongdoing, that's a claim
7 to be resolved in the bankruptcy case along with other
8 claims. And let me ask why --

9 MR. LEVITT: Judge, may I speak? May I speak,
10 please? And I'm sorry to interrupt you, sir. But my point
11 is you're basing the Bankruptcy Code and the law based upon
12 their user agreements. That's what you're ruling with. And
13 in their exact user agreement, it states, as my counsel has
14 said, that every -- that Voyager themselves in the agreement
15 state everyone must be treated individually based on the
16 facts and that the information regarding how a bankruptcy
17 proceeding will actually adjudicate is extremely hazy and
18 that there's no precedent to it. So that states that you do
19 have the ability as a judge to look at this and treat people
20 equitably based on their situation.

21 The other thing is that Ms. Okike --

22 THE COURT: Hang on, Mr. Levitt. Let me make
23 clear. I am relying on the terms of the agreements insofar
24 as they determine whose property the cash currently held is,
25 who owns that property. As to how creditor claims are

1 treated in bankruptcy, the contracts do not govern that.

2 The Bankruptcy Code governs that. Okay?

3 MR. LEVITT: Okay, so here's my next point then.

4 Okay? Ms. Okike at Kirkland and Ellis when she tried to

5 describe me as the same as everybody else -- because I also

6 provided evidence that I had a partially filled order. And

7 then she stated that that would be -- that that could be

8 canceled, which is part of this same motion to cancel

9 partially filled orders.

10 Now, let me explain why there were three orders.

11 There were three orders because this firm only allowed you

12 to make orders at \$250,000 apiece. Okay? That's why I had

13 to make three orders. And they were all done in the same

14 minute, and Voyager wasn't an exchange, they were a broker.

15 So, when they set those orders out, they all went out in the

16 same 10 seconds. And they should all be ordered like seen

17 as one order. So, if you won't allow that, then you -- then

18 please allow for my partially-filled order of \$676,000 to be

19 canceled so I can be treated equitably to all of the other

20 accounts that thy wish to partially fill -- that they wish

21 to cancel. Okay?

22 I have a solid argument both ways here, sir.

23 Like, you know, I'm -- like, you're asking me -- you're

24 saying to me, I should just be a creditor. Okay? But the

25 Debtors' attorneys just said they would cancel one of the

1 orders. It's essentially one order. And that's something
2 you could --- please, can you comment on?

3 MS. OKIKE: Your Honor, this is Christine Okike of
4 Kirkland and Ellis on behalf of the Debtors. I think I
5 tried to make this clear in my presentation, but there's
6 only \$120.52 that was not processed. And that is being held
7 in the Debtors' system as a held order. So, yes, in
8 connection with this motion, we would be seeking to
9 reconcile that amount.

10 But the remaining amount, the \$249,879.48, is not
11 cash that we are holding. It's currently Bitcoin.

12 MR. SINGER: Your Honor, Jeb Singer for Mr.
13 Levitt. I don't think that's what she said, and I don't
14 think that's what the motion asked for. The motion asked to
15 cancel partially-filled orders. There's no question that
16 his --

17 THE COURT: No, no. I'm going to interrupt you.

18 MR. SINGER: Yes, Your Honor.

19 THE COURT: What I understood is the motion seeks
20 permission to cancel the parts of orders that are still
21 unfilled, not to cancel prior orders to the extent they were
22 already filled, but to cancel the parts that currently
23 remain unfilled. That's my understanding. Am I wrong about
24 that, Ms. Okike?

25 MS. OKIKE: Yes, Your Honor, that's correct.

1 MR. LEVITT: The words are cancel partially filled
2 orders. Mine was a partially filled order. That means you
3 cancel the order. It's pretty black and white English.
4 Partially filled order canceled. Okay? Clear in the
5 motion.

6 THE COURT: No. Okay. The motion seeks to cancel
7 the portions of orders that remain unfilled. That's what
8 the motion seeks to do. Okay?

9 MR. LEVITT: That's not the way I read it, and
10 that's not the way it's written. It says cancel partially
11 filled orders. And I state that this is one order all made
12 within the same 10 seconds, only because the company limited
13 orders to \$250,000. And I've shown evidence that it was all
14 submitted in that same minute.

15 THE COURT: Ms. Okike, are you seeking to cancel
16 and reverse any orders to the extent they were already
17 partially filled or just to cancel the unfilled portions of
18 them?

19 MS. OKIKE: Just to cancel the unfilled portions,
20 Your Honor.

21 MR. SINGER: Your Honor, that's not what the --
22 Jeb Singer for the -- for Mr. Levitt. That's not what the
23 motion says. It says reconciling and fulfilling filed
24 orders to buy or sell, partially filled orders. Reconciling
25 partially filled orders.

1 MS. OKIKE: No. It says --

2 MR. SINGER: All -- and otherwise canceling all
3 open orders that were not filled or partially filled prior
4 to the freeze date. That's exactly -- he definitely falls
5 within that category.

6 And by the way, Your Honor, I just want to be
7 clear, that's only an alternative basis for granting the
8 relief that we request in our limited objection and our
9 cross-motion. Okay?

10 The real point here, I think when you look at the,
11 you know, the equitable argument under the best interest
12 provisions of the FTC and under Section 105 of the
13 Bankruptcy Code, they come down to the fact that his claim
14 arose by their improper, inexcusable, inequitable, unfair
15 refusal to honor a COI request, an uncontroverted -- wire
16 request, rather, Your Honor, on June 23rd. Okay? The
17 Debtors have stated that all wire requests were frozen prior
18 to that time. They put in zero evidence. They say, oh,
19 it's in some press release or somebody reported it. They
20 did not put any sort of evidence into the record. And at
21 the very least, we should be -- an evidentiary hearing as to
22 whether they had a right not to fulfill a wire request.

23 Your Citibank example, Your Honor, is right on
24 point. Okay? Citibank cannot go and just refuse to fulfill
25 a wire request. If I request my money by wire, they have to

1 honor it just as the Debtor had to. It's uncontroverted
2 here that the Debtor told Mr. Levitt through the chat that I
3 put in as an exhibit to Mr. Levitt's affidavit that they
4 would honor his wire request. They didn't do it. Okay? At
5 that point, his claim arose.

6 The fact that he went out there and mitigated
7 damages I think is smart. Okay? Because he needed to get
8 his money out and get his money as fast as possible because
9 of the concerns about liquidity. But his claim in
10 bankruptcy arose at the moment he put in a wire request.
11 Okay? For him to be treated differently than any other cash
12 customer is actually --

13 THE COURT: All right, stop.

14 MR. SINGER: He actually did more --

15 THE COURT: Just stop. Stop. Stop, stop. I've
16 heard enough.

17 And let me just say again, I understand, I
18 completely sympathize. I understand why tempers are hot.
19 But you cannot turn the Debtors' motion into what you want
20 it to be rather than what it is or at least what the Debtor
21 says is what they're looking for right now. Okay? And if
22 you misunderstood or if the Debtor was inartful in
23 describing what they were looking for, nobody is being
24 treated differently than they are proposing to treat you.
25 They are not proposing to undo the portions of any

1 transactions that previously were filled. They're seeking
2 to cancel orders that presently remain unfilled to the
3 extent they presently remain unfilled. So, if it was 99
4 percent billed before the bankruptcy, they're only seeking
5 to cancel the one percent. And everybody will be treated
6 the same in that regard.

7 I understand your anger and I understand your
8 feeling that you were wronged. But adding words like
9 wronged, totally, and making it more extreme doesn't change
10 the fact -- does not change the fact -- that what you have
11 described is a creditor claim. And it doesn't -- you don't
12 have priority just because you feel you were more wronged
13 than somebody else.

14 You -- for whatever reason, what you actually have
15 is a claim for Bitcoin. And if you don't actually have cash
16 in the FBO account, then you don't actually have ownership
17 of something that is outside of the estate. You have a
18 claim. And I can't just because you are more upset than
19 others -- you may not be more upset than others. But I
20 can't just because you are upset or because you feel wronged
21 or, quite frankly, even on the theory that you were strongly
22 wronged, I can't treat you as owning something that is
23 different from what you actually own. I am not allowed to
24 do that. You reference --

25 MR. LEVITT: Sir, you -- are you allowed to do

1 this? On Docket 73 Section 13.3, reconciling and fulfilling
2 partially filled orders to buy or sell cryptocurrency and
3 otherwise canceling all open orders that were not filled or
4 partially filled prior to the freeze date, otherwise
5 canceling all open orders that were partially filled. So
6 that is clear English that applies to my case.

7 THE COURT: Just stop. Just stop. Okay? They
8 are not bound by your interpretation of the language they
9 used in their motion. I've tried to be patient. I've tried
10 to explain that. But the fact that you think that language
11 means something doesn't mean that that's what they are
12 seeking or that what I have -- or what I have a power to
13 order or what the motion is really about. They've said very
14 clearly, and they are the movant, that that's not what they
15 are seeking to do. I can't force them to do it. You can't
16 force them to do it. They're not seeking to do it. I don't
17 know how to be any clearer about that. Okay?

18 MR. SINGER: Your Honor, I think that's clearly
19 what they wrote, they want to do. Now, they're changing
20 their tune.

21 THE COURT: Well, it doesn't matter. It's not
22 what they're seeking today to do, and it's not what I
23 therefore would give them permission to do.

24 I have to tell you; I don't think that was ever
25 what they were seeking permission to do. Maybe that's what

1 you interpreted, but I didn't interpret it that way.

2 MR. SINGER: Your Honor, I think denying Mr.
3 Levitt his cash claim based on their refusal, without any
4 justification -- and I'm very -- you know, I'm sorry if I
5 get emotional. I am very passionate about my argument. I
6 am very passionate about helping my client. Okay? But
7 allowing them to get away with not fulfilling a wire order
8 is a very dangerous precedent. It's basically just
9 withholding without any policy that applies to everybody
10 that says no wire orders are allowed. It's allowing them to
11 withhold my customer's -- my client's assets.

12 And for you to say, no, he owns cryptocurrency
13 now, not cash because he bought cryptocurrency afterwards,
14 that's sort of ignoring how intelligent he was to try to
15 mitigate damages.

16 I do think you have the power to undo that
17 transaction. I am asking you to undo that transaction based
18 on your equitable powers under Section 105. And I think not
19 doing so would -- and allowing somebody to not honor a wire
20 request is really a dangerous precedent, and I once again
21 ask that you treat him as a cash customer.

22 THE COURT: Let me make two points. Number one, I
23 don't have that power as an equitable matter. If you look
24 at the caselaw under Section 105, it's very clear. I don't
25 have the power under 105 to change what the Bankruptcy Code

1 says. I have the power only to implement the terms of the
2 Bankruptcy Code.

3 Also, to the extent that you even think you're
4 entitled to this relief, it is disputed by the Debtor.
5 Right? I haven't had a factual hearing. I haven't had a
6 proper complaint. I haven't had discovery. I haven't had
7 all the things that I would have to have in order to rule on
8 whatever the factual issues are that would underly such a
9 dispute.

10 So even if what you were describing was something
11 that there was a legal basis for, I couldn't give it to you
12 today.

13 MR. SINGER: Hence why I put in my cross-motion,
14 Your Honor.

15 THE COURT: Okay. And we'll consider that --

16 MR. SINGER: And I would like an evidentiary --

17 THE COURT: All right. But we won't have an
18 evidentiary hearing at that first hearing. What we'll have
19 is --

20 MR. SINGER: No, I understand that.

21 THE COURT: Right. But please, you have to
22 understand I'm not trying to be unsympathetic. I am not
23 trying to change rules. I am not trying to endorse what you
24 think was wrongful behavior. You have to understand the
25 rules in bankruptcy about the claims process and equal

1 sharing among creditors are intended for the benefit of the
2 creditors. You keep talking about this as if it's just you
3 and the company. But what happens to the claims against
4 this company or the assets of this company has to
5 potentially affect everybody. And I have to make sure that
6 if the property belongs to the company, that it winds up and
7 its value winds up being distributed ratably and equally
8 among all creditors, not that it be given to anybody in
9 particular because they feel like they were particularly
10 wronged unless there is something in the Bankruptcy Code
11 that gives them a priority.

12 Now, it may be the fact that there is cash that is
13 not property of the estate and therefore is not subject to
14 those rules. But your anger at the company -- and when you
15 think that by not granting your claim I am somehow siding
16 with the company as opposed to the interest of all creditors
17 and the requirements of the Bankruptcy Code that all
18 creditor claims be stopped and be dealt with ratably, that's
19 what I am doing. You have to understand that. Okay? If
20 you don't understand that, please talk to a bankruptcy
21 lawyer and maybe you'll get an understanding. All right?

22 All right. So, to the extent that there was a
23 cross-motion presently and before me to treat Mr. Levitt as
24 a cash creditor, I will deny that without prejudice. I
25 understand that there's further proceedings that may come up

1 at the next hearing. All right?

2 MS. OKIKE: Thank you, Your Honor. May I proceed
3 with the rest of the relief we are requesting today?

4 THE COURT: Yes, please.

5 MS. OKIKE: Your Honor, the Debtors are also
6 seeking authority through the motion to continue certain
7 ordinary course pre-petition business practices, including
8 liquidating cryptocurrency assets attributable to customer
9 accounts that hold a negative U.S. dollar balance and
10 sweeping such cash which is held on third-party exchanges
11 into the Debtors' operating accounts.

12 Your Honor, a customer can have a negative account
13 balance when the customer executes a transaction on the
14 Debtors' platform. The Debtors purchase the cryptocurrency
15 on behalf of the customer. The customer then seeks to
16 reverse the ACH transfer of cash that was made into the
17 MCFBO account to fund the transaction, leaving the Debtors
18 with the cryptocurrency and a shortfall in the MCFBO account
19 which the Debtors are responsible for under the MCB
20 agreements.

21 Each day that an account with a negative balance
22 is not liquidated, it subjects the Debtors to the risk of
23 price depreciation in the cryptocurrency. Given the current
24 market volatility, having the authority but not the
25 obligation to liquidate customer accounts with a negative

1 balance will serve to preserve estate assets for the benefit
2 of the debtor's customers.

3 Your Honor, if the Debtors are authorized to
4 liquidate cryptocurrency from customer accounts with a
5 negative cash balance, they anticipate generating
6 approximately \$3.2 million in cash.

7 c

8 Your Honor, I would pause there to see whether
9 there's any questions with respect to this part of the
10 motion.

11 THE COURT: Do you need my authority to do these
12 two things?

13 MS. OKIKE: Your Honor, I believe this is ordinary
14 course. But out of an abundance of caution, we wanted to
15 apprise parties as to what we intend to do.

16 THE COURT: And just to be clear, you are not
17 asking me to authorize you to do something that you would
18 otherwise have a legal right to do, you're just asking me to
19 essentially say that to the extent it's not in the ordinary
20 course of business, it's okay. But you still have to have
21 the legal right to do these things, right?

22 MS. OKIKE: Yes, Your Honor.

23 THE COURT: Are there any objections? All right.
24 I will grant those two portions of the relief.

25 MS. OKIKE: Thank you, Your Honor. The Debtors

1 are also seeking authority to continue to engage in various
2 ordinary course reconciliation practices related to customer
3 accounts, including reconciling cryptocurrency deposits and
4 withdrawals that currently hold an incomplete status,
5 reconciling withdrawals that were submitted prior to the
6 freeze date, reconciling and fulfilling partially-filled
7 orders to buy or sell cryptocurrency, and otherwise
8 canceling all open orders that were not filled or partially
9 filled prior to the freeze date. And just to put -- just to
10 be very clear here, we are only seeking to cancel orders --

11 MALE 1: Thank you. We're all (indiscernible).
12 Thank you.

13 THE COURT: Go ahead, Ms. Okike.

14 MS. OKIKE: Sorry about that. I'm not sure what
15 that was.

16 We are just seeking to cancel orders that were not
17 completely filled prior to the freeze date. So just the
18 amount that was not -- the amount of cash that is not
19 attributable or that we were not able to complete an order
20 prior to the petition date. We're not seeking to kind of
21 cancel orders where we're holding Bitcoin but there's a part
22 of cash that was not able to purchase coin prior to the
23 petition date.

24 We are also seeking to -- we are also seeking to
25 close accounts that no longer have a balance and to disable

1 user access to the Debtors' platform, to receive customer-
2 withdrawn or deposited cryptocurrency that was sent to
3 incorrect blockchains, and to close unfunded accounts that
4 the Debtors deem fraudulent.

5 Your Honor, these reconciliatory practices which
6 the Debtors engage in in the ordinary course of business are
7 primarily accounting-related in nature and are commonplace
8 in technology-focused platforms similar to the Debtors'.

9 Your Honor, it's important for the Debtors to
10 correctly reconcile customer balances to ensure that they
11 accurately reflect all trading and transfer activity that
12 took place prior to the petition date so that the Debtors'
13 books and records accurately reflect pre-petition claims and
14 that when there is a distribution to customers as part of a
15 plan, it's based off of correct balances.

16 THE COURT: Let me ask you because it's not clear
17 to me. Are you proposing to (indiscernible) in the purchase
18 or sale (indiscernible).

19 MAN 2: (Indiscernible) just let me --

20 MS. OKIKE: Your Honor, I'm having trouble hearing
21 you. I think somebody is not on mute.

22 MAN 3: (Indiscernible). Can you hear me? Hello?
23 Hello?

24 MAN 4: Yes.

25 MAN 3: Okay. (Indiscernible) --

1 MAN 4: I can hear you. In fact, I could hear
2 Christine.

3 MAN 3: Hey. They approved -- they just approved
4 the USB retrieval.

5 THE COURT: Whoever is talking on the phone,
6 please mute yourself. You're interfering with the hearing.

7 MAN 3: (Indiscernible). He has just approved
8 that 10 minutes ago.

9 MAN 4: Going to be a big rush today. Is it
10 turned on today, or at some point or --

11 THE COURT: Lorraine, can you turn off whoever
12 that is?

13 MAN 4: Technically, is it turned on today, or
14 does that come later?

15 MAN 3: No, I don't know when that's going to
16 happen.

17 CLERK: Your Honor, it's not showing on the
18 dashboard. I can't see. It's nobody in the live lines.
19 So, I'm not sure where it's coming from.

20 UNIDENTIFIED SPEAKER: It looks like it's G.
21 Pedraza.

22 CLERK: Right. But he's not on a live line, so we
23 shouldn't hear him at all. All right. I'm going to see if
24 I can hang him up.

25 THE COURT: I just did. I just did. All right.

1 Please, Ms. Okike, go ahead.

2 MS. OKIKE: I believe Your Honor was about to ask
3 me a question.

4 THE COURT: Yeah. Are you proposing to fulfill
5 any currently unfilled purchase or sale orders?

6 MS. OKIKE: Which -- so, Your Honor, it probably
7 makes sense for me to explain kind of when deposits and
8 withdrawals hold an incomplete status. So, this is
9 basically a deposit or a withdrawal that kind of got stuck
10 before the platform was shut down. With respect to crypto
11 deposits, we have to determine whether we actually received
12 the deposit from a customer's wallet address. If we did
13 received it, we would set the status to clear and we would
14 sweep the funds into our Bedrock account. But if we did not
15 receive it, we would cancel the deposit. And so, we would
16 reflect that in the customer's account that we never
17 received it.

18 With respect to crypto withdrawals, we have to
19 determine whether the assets were sent to the blockchain.
20 So, if they were sent, then the Debtors set the status and
21 complete the accounting where necessary. But this has no
22 kind of impact on the customer portfolio value. And if it
23 hasn't been sent, then we would basically cancel the
24 withdrawal and credit the customer's asset balance on the
25 platform.

1 THE COURT: So, in essence what you're doing is
2 just finishing your recordkeeping as to what happened before
3 the bankruptcy and what didn't happen, what didn't get
4 finished basically.

5 MS. OKIKE: Correct, Your Honor.

6 THE COURT: And you're not proposing today to buy
7 or sell something based on an order that was given to you
8 many, many weeks ago. Right?

9 MS. OKIKE: No, Your Honor.

10 THE COURT: Okay. All right. Does anyone have
11 any objection to this portion of the motion?

12 I take it what you also want to do here is to
13 replenish the FBO account to the extent that the ACH
14 transfers have left a deficit. Is that right?

15 MS. OKIKE: Yes, Your Honor. So, when we look at
16 customer cash and what is supposed to be in the FBO account,
17 there is a deficit. I think it's approximately \$2.8 million
18 right now.

19 That being said, there will be a process for
20 opening the app so that customers can withdraw cash. I
21 don't know that we anticipate that all customers will
22 withdraw cash. But in the event that that does happen, we
23 are seeking through this motion to replenish that in the
24 ordinary course pursuant to our agreements with MCB.

25 THE COURT: While retaining your rights against

1 customers, right?

2 MS. OKIKE: Yes, Your Honor.

3 THE COURT: And how big an issue is this as a
4 practical matter? Are there time limits within which ACH
5 transfers must be questioned or challenged?

6 MS. OKIKE: Yes, Your Honor. There's -- it's
7 about a 60- to 90-day period from when a customer receives
8 their personal bank statement that they can challenge a
9 transaction. But as we kind of noted, we've been
10 aggressively trying to prevent this practice. We've
11 contacted the 30 largest banks that most customers transact
12 with, and it's obviously -- it's a felony to engage in a
13 fraudulent ACH transfer. And so, we have contacted
14 customers that we believe have done so as well as banks and
15 are going through the process of kind of evaluating those
16 claims and determining our rights to pursue.

17 THE COURT: Okay. And at the moment what's the
18 size of the deficit?

19 MS. OKIKE: I believe it's \$2.8 million.

20 THE COURT: Let me ask the Committee counsel. You
21 are in favor of this portion of the motion?

22 MR. AZMAN: We are, Your Honor. And the other
23 point we would note is that the agreements between MCB --
24 sorry, it's Darren Azman again just for the record. The
25 agreements between MCB and the Debtors actually allow MCB to

1 take that deficit out of an operating account. It's the
2 reserve account from the Debtors. And so, from our
3 standpoint, it's happening one way or another. I know that
4 MCB's counsel said earlier they don't think they had claims.
5 That's fine. But the agreements certainly appear to allow
6 them to fill that hole whether we like it or not. And so,
7 for that reason alone, we support it. But also, for the
8 reasons that Ms. Okike has said.

9 THE COURT: Very good. Unless anybody else wants
10 to be heard, I will approve that motion.

11 MR. GRAFF: Your Honor, again, Steven Graff on
12 behalf of stakeholders of the Canadian VDL entity. I just
13 raise, Your Honor, the concern that you too had expressed
14 earlier as to whether or not the payment by VDL to the FBO
15 account at the bank could constitute a preference on the
16 basis that the UCC filing was not affected, and that
17 otherwise the bank would merely be an unsecured creditor or
18 the Voyager entity. So, again, I raise the same concern you
19 had raised early. As long as that right I guess to recover
20 those funds on the basis of potentially being a preference
21 are reserved, then I can understand the payment. Otherwise,
22 it strikes me as potentially preferential to all the other
23 unsecured creditors. Thank you, Your Honor.

24 THE COURT: Does the Committee have a response?

25 MS. OKIKE: Your Honor, our view is if there is a

1 deficit, which at this point we don't know. Right? Because
2 we don't know how much customers are going to withdraw. But
3 our view is that is a post-petition claim that is going to
4 arise when a deficit occurs, which has not happened to date
5 because customers are not allowed to withdraw. And under
6 the terms of our agreements with MCB, we have the obligation
7 to satisfy that deficit. We don't view it as a pre-petition
8 claim. We view it as continuing to perform under the
9 agreement in the ordinary course. And obviously these
10 agreements are kind of central to the platform. And so,
11 it's essential that we perform so that we can keep them in
12 place.

13 THE COURT: Well, I am not convinced by that. You
14 have a pre-petition contract, so that makes it a pre-
15 petition claim. But there may be offset rights. And to the
16 extent there are offset rights, those may be secured claims.
17 What's your position on that?

18 MR. AZMAN: Your Honor, it's Darren Azman for the
19 Committee. One, I agree with Ms. Okike that these are post-
20 petition claims. The chargebacks occurred post-petition as
21 far as we understand. And although it's based on a -- just
22 like if you had a purchase agreement that's pre-petition, if
23 the actual purchase occurs post-petition, it's post-
24 petition. Or if the delivery or products occurs post-
25 petition, it's post-petition.

1 Here, I believe the chargebacks occurred post-
2 petition, which gives rise to the obligation of Voyager to
3 fill that hole. And then MCB has the setoff rights under
4 contract to take the money out of the reserve account to do
5 it themselves. And I believe they would also have the
6 ability to do that under the doctrine of recoupment such
7 that even if it was a pre-petition claim being sought to set
8 off against a post-petition claim, obviously recoupment does
9 not have that same limitation.

10 MS. OKIKE: Yes, Your Honor. Just to confirm,
11 these are all post-petition ACH withdrawals.

12 THE COURT: The ACH withdrawal may have been post-
13 petition, but that isn't enough to make it a post-petition
14 claim where essentially what you're enforcing is a pre-
15 petition indemnity or a pre-petition contractual
16 reimbursement obligation any more than a post-petition
17 lawsuit is a post-petition claim under a pre-petition
18 indemnity contract. But to the extent there are offset or
19 recoupment rights here, that would make the difference to
20 me. Or to the extent that the dollar amount is small enough
21 that it doesn't make much of a difference, then it
22 (indiscernible) make a difference to me. But I'm not going
23 to approve it just on the idea that it's a post-petition
24 claim, because I think that's wrong.

25 MS. OKIKE: Your Honor, I mean, MC Bank's counsel

1 should chime in. But they do have a right to setoff under
2 the terms of the agreement. We're obviously responsible
3 then, we're holding a reserve in connection with not
4 satisfying our obligations, which includes ACH transfers.
5 And if they have a valid setoff claim, they would be the
6 holder of secured claim, and thus allowing us to satisfy the
7 ACH chargebacks in the ordinary course would not harm the
8 rights of unsecured creditors or shareholders.

9 MS. WOLF: Your Honor, Amy Wolf from Wachtell
10 Lipton. Ms. Okike is certainly correct. There's \$24
11 million reserve account against which selloff rights could
12 be -- could be. But clearly, we have -- are perfected, we
13 hold the account. We clearly could set off against it if we
14 had a claim. I continue to believe that actually we don't
15 have a claim right now, that the bank is not -- this is not
16 a transfer to the bank. This is a transfer into an account
17 that is holding customer funds and replenishing those
18 customer funds. I don't believe the bank is -- if there's a
19 preference -- I think the concern Your Honor raised earlier
20 about a preference is customers who are receiving a payment
21 on account of the past 90 days of transactions or whatever
22 is, you know, is there potentially a preference claim
23 against the customers. And wouldn't it be easier if the
24 money stayed in the bank than being sent out to the
25 customers who would have to be individually chased. I

1 thought that was Your Honor's question. But I don't think
2 there's a question about the bank being preferred, because I
3 don't think the bank is asserting a claim.

4 But we do -- at the end of the day if we had to,
5 if we ended up being compelled somehow to go negative in the
6 account, then yes, we certainly have the ability to setoff
7 against the reserve account. That's why it's there. And
8 Voyager has been very careful about recognizing that right.
9 I just don't think we ever get there in the analysis is my
10 only point.

11 MR. GRAFF: And, Your Honor, it's Steven Graff
12 from Aird & Berlis again. I respect the comment made, but I
13 don't believe that I've seen -- certainly I have not had the
14 benefit of again retaining U.S. counsel to address these
15 issues. And this is a matter that I don't know is before
16 Your Honor insofar as whether there is security in the name
17 of MC Bank that is held as against this particular reserve
18 account. Certainly, that reserve account is not held in
19 trust for the benefit of MC Bank.

20 THE COURT: I think the argument is that under the
21 Bankruptcy Code, a common law offset right is treated as a
22 security claim without regard to UCC perfection or anything
23 like that. And that the contracts here make very clear that
24 there is rights to reimbursement in this account for any
25 deficiency from the reserve account. Have I stated that

1 correctly, Ms. Wolf and Ms. Okike?

2 MS. OKIKE: Yes, Your Honor.

3 MS. WOLF: I'm sorry, Your Honor. I'm having
4 trouble hearing you. Apologize.

5 THE COURT: All right. I will grant this part of
6 the motion for the reasons --

7 MS. WOLF: Thank you, Your Honor.

8 MS. OKIKE: Thank you, Your Honor.

9 Your Honor, the last part of the motion, the
10 Debtors are seeking authority to continue staking in the
11 ordinary course of business subject to the Committee's right
12 to notice and an opportunity to object to the Debtors'
13 proposed staking or unstaking of any cryptocurrency.

14 Your Honor, staking involves locking up a portion
15 of your cryptocurrency as a way of contributing to a
16 blockchain network. Staking benefits networks that use a
17 proof of stake model because the stake coins can be used to
18 verify transactions and forge new blocks in the blockchain.

19 In proof of stake, only holders of the native
20 tokens who stake their own coin in the network become a
21 valid --

22 CLERK: I'm sorry, Your Honor. Your Honor, I'm
23 sorry. We have to interrupt because I was trying to see if
24 we could continue until the end of this motion. However,
25 the tape is going to run out at 2:25. So we need to stop

1 now.

2 THE COURT: And what do we do? Can we
3 (indiscernible)?

4 CLERK: Yeah. You could take a -- I guess to give
5 the ECRO an opportunity to change the tape and to resume. I
6 was trying to wait until the end of this motion, but
7 apparently, it's not -- it's going to run out sooner.

8 THE COURT: All right. Let's take a five-minute
9 break. Does that work?

10 CLERK: I think she needs more time than that,
11 Your Honor.

12 THE COURT: How much time?

13 CLERK: I don't know, but I would say at least 15
14 minutes.

15 THE COURT: Is the ECRO on the phone?

16 CLERK: Unless you want to stop here and then stop
17 again to give her a break.

18 CLERK: Judge, this is Jenna. I am in
19 communication with the ECRO. She said five minutes will be
20 fine.

21 THE COURT: All right. We'll take a five-minute
22 break. Sorry for the interruption.

23 (Recess)

24 THE COURT: All right. Are we ready to resume
25 then?

1 MS. OKIKE: Yes, Your Honor.

2 THE COURT: All these proceedings are recorded by
3 tape, and we've been on for long enough that apparently
4 we're nearing the end of the tape, so that's why we had to
5 break.

6 So please proceed as to the portion of your motion
7 that (sound glitch) staking operations.

8 MS. OKIKE: Yes. Thank you, Your Honor. So, Your
9 Honor, in a proof of stake model, only the holders of the
10 native token who stake their claim in the network become a
11 validator to make the process more reliable.

12 And staking is important to the crypto ecosystem
13 because it is critical for a blockchain project to have
14 enough cryptocurrency on hand to facilitate transactions and
15 keep the blockchain running.

16 One of the ways that a blockchain service provider
17 can ensure that it has enough cryptocurrency on hand to
18 execute transactions is by setting up a staking protocol.
19 The blockchain service provider will ask for other
20 institutions to stake it with cryptocurrency or transfer
21 cryptocurrency to the platform to process transactions.
22 While some staking protocols require that the staker leave
23 the cryptocurrency on the blockchain for a fixed period of
24 time, others allow the cryptocurrency to be taken off at any
25 time or after a certain notice period.

1 Importantly, Your Honor, staking cryptocurrency is
2 not the same as lending cryptocurrency. And to be clear,
3 the Debtors are not seeking and do not intend to lend any
4 cryptocurrency pursuant to this motion. Staked coins are
5 not used for liquidity purpose by the network. Rather,
6 staking simply helps the blockchain work. And in exchange
7 for staking, stakers can earn rewards typically in the form
8 of additional coins or tokens.

9 And in that way, staking is similar to depositing
10 money in a bank in that an investor locks up their assets
11 for a period of time and, in exchange, earns interest. And
12 in turn, staking provides a means for the Debtors to
13 generate passive income on their cryptocurrency assets while
14 trading on the Debtors' platform is frozen.

15 Historically, the Debtors stake cryptocurrency on
16 their platform in the ordinary course of business and,
17 importantly, the customer agreement between Voyager and each
18 customer explicitly allows the Debtors to stake
19 cryptocurrency; that's Section 5(d) of the customer
20 agreement.

21 Your Honor, as described in the Ehrlich
22 declaration, from July 1, 2021 to June 30, 2022, the Debtors
23 staked up to 16 coins at any given time and earned an
24 average yield of approximately 7 percent, generating
25 approximately 51 million in staking rewards. This gives you

1 a sense of the significant value that can be generated
2 through staking.

3 The Debtors have eight coins that are currently
4 staked: four of those coins have no lockup period, one coin
5 has a three-day lockup period, one coin has a 28-day lockup
6 period, and one coin has a 30-day lockup period, and one
7 coin's lockup period is unknown because it is based on a
8 future event.

9 Your Honor, the Debtors' anticipate staking
10 approximately 19 coins on a go forward basis for a potential
11 average yield of approximately 7 percent. Seven of the
12 proposed staking coins do not have a lockup period and can
13 be withdrawn at any time.

14 For the remaining 12 coins, the lockup period -- I
15 think someone's not on mute.

16 Your Honor, for the remaining 12 coins, the lockup
17 period is less than 30 days, and lockup periods are a number
18 of days from when the unlock command is performed.

19 Your Honor, the Debtors view staking as a low risk
20 means to continue to generate income for the benefit of
21 their estates and to offset some of the administrative costs
22 while the platform is frozen.

23 As reflected in the revised proposed order, the
24 Debtors have agreed to provide the committee with seven
25 business days' written notice prior to staking or unstaking

1 any cryptocurrency, including information regarding the
2 staking protocol, the smart contract address, anticipated
3 yield, the cryptocurrency to be staked, staking mechanics,
4 the lockup period, transaction fees, the actions required to
5 unstake, and the involvement of any third party and their
6 respective fees.

7 If the committee objects to the proposed staking
8 or unstaking within seven business days of receiving the
9 staking notice, the Debtors will not stake or unstake until
10 such objection is adjudicated by Your Honor.

11 Your Honor, we filed the revised -- maybe I'll
12 pause there before I go to the order and see whether Your
13 Honor has any questions about the staking portion of the
14 motion.

15 THE COURT: What are the risks of continuing the
16 staking? What can happen that might put the holdings at
17 risk?

18 MS. OKIKE: Yeah, it's a good question, Your
19 Honor. So I think there's a couple different potential
20 risks. One is that obviously cryptocurrency is a volatile
21 investment and so, you know, price swings are common. And
22 as I noted, some staking protocols require you to lock up
23 your funds for a period of time, in which case, you're not
24 able to unstake during that period. I think this is
25 mitigated to a large extent given the staking -- the lockup

1 periods with respect to the coins that we are anticipating
2 to stake, as well as kind of working closely with the
3 committee to determine whether it makes sense in the best
4 interest of the estate to stake certain coins on a go
5 forward basis.

6 I think the other -- Your Honor, there's something
7 that's known as slashing, and slashing is basically you can
8 get penalized on proof of stake networks to the extent that
9 you're engaging in kind of fraudulent actions; obviously,
10 the Debtors would not be doing that. But to the extent that
11 a network accuses you of kind of trying to defraud the
12 network, there are penalties associated with that, including
13 a reduction in rewards or actual seizure of the tokens in
14 extreme circumstances.

15 THE COURT: If I understand staking, and it's
16 quite possible I don't, the staked cryptocurrency is used as
17 a way of validating other transactions. Can there also be
18 slashing if it turns out that some of those other
19 transactions were fraudulent without any participation by
20 you in the fraud?

21 MS. OKIKE: No, Your Honor. So my understanding
22 is slashing primarily happens, you know, due to two reasons:
23 one is if you have significant downtime. So obviously the
24 purpose of staking is for you to validate transactions on
25 the network and so, if you're not validating transactions,

1 you can be penalized for that. So that's basically the
2 downtime is the inactivity of a validator to sign
3 transactions.

4 The other kind of occurrence for slashing is when
5 you kind of double sign transactions, so that's when you try
6 to validate two transaction blocks at the same time, which
7 can obviously cause confusion in the network.

8 I can just say that my understanding from the
9 Debtors is that, you know, we've never been subject to
10 slashing with respect to our staking and, obviously, we
11 would continue to stake as we have done historically subject
12 to committee review and approval.

13 THE COURT: All right. Let me hear from the
14 committee on this one.

15 MR. AZMAN: Your Honor, it's Darren Azman. We
16 initially had a lot of heartache about this motion when we
17 reviewed it after we were appointed. I'm going to turn
18 things over to my colleague, Joe Evans, who's going to talk
19 about why we had that heartache and also answer your
20 question about what the risks are in staking.

21 But what you'll hear is ultimately, we did not
22 have sufficient time between when we were appointed and
23 today to get comfortable with both what the Debtors
24 currently have staked, right, because they could either
25 leave it staked or un stake it and, more importantly, with

1 what the Debtors may want to stake in the future.

2 And so, ultimately, we're signed off on the
3 proposed order because it does give the committee consent
4 rights effectively over any decisions regarding staking,
5 including what's currently staked.

6 But let me turn it over to my colleague, Joe
7 Evans, to help the Court understand a little bit better what
8 the risks are here.

9 MR. EVANS: Your Honor, this is Joe Evans from
10 McDermott on behalf of the committee.

11 One of the risks that we identified, along with
12 those that counsel identified, are that these staking
13 protocols, you must stake in the native token for that
14 protocol. So what that means is that you're taking Bitcoin
15 and sometimes Ether and cryptocurrencies, commonly are blue-
16 chip cryptocurrencies, and turning them into more
17 speculative cryptocurrencies and then staking those.

18 So while there is a risk of slashing, there is a
19 risk of the protocol failing, there is also a risk that your
20 tokens, your tokens that you have staked, are going to be
21 reduced in value as compared to the price of Bitcoin or
22 Ether or other tokens that customers had on the platform.
23 So that's one primary risk that we saw.

24 The other is the Debtors' definition of staking,
25 which was set forth in their Securities filings is a little

1 different than the industry perceives it to be. It is not
2 just taking tokens and putting them directly pledged to a
3 decentralized finance protocol to validate transactions and
4 things of that nature. They've also described their staking
5 programs as, "delegating crypto assets to staking platform
6 providers."

7 And so, what that means is that there is a
8 middleman in between the company and the actual stake. So
9 we are reviewing all of these, both contracts with the
10 middlemen, the particular tokens at issue, and the viability
11 of the thinking protocol itself.

12 In our experience that we've been doing for many
13 years, not all staking programs are the same, not all the
14 risks are the same, and while they do have these slashing
15 risks, these native risks, there's also a risk that the
16 staking program doesn't work and that's happened in subject
17 litigation across the country in various different aspects.

18 And so, because we didn't have sufficient amount
19 of time to review each staked position and as to whether
20 there should be (sound glitch) unwinding of those positions
21 and staking going forward, we negotiated this provision in
22 this order so that the committee would have the properly
23 evaluated staking position and middlemen at issue, in
24 particular, and whether we want exposure to those particular
25 tokens or not, rather than more blue-chip cryptocurrencies

1 like Bitcoin. And so, (sound glitch) those are the risks
2 that we've (sound glitch).

3 THE COURT: Well, does not make more sense,
4 instead of just giving you a kind of carte blanche yes or no
5 authority, to wait until we have more specificity as to
6 exactly how this staking operation will work?

7 MR. AZMAN: I'll handle that, Joe. So I think the
8 concern -- we thought about that, but we didn't want the
9 Debtor to have to come back to the Court because we do see
10 the merit. I mean, you just heard from Ms. Okike how much
11 money the Debtors have made off of staking, and we want the
12 Debtors to be able to put, you know, their assets to work
13 while they're sitting in the estate. And the concern was if
14 we, you know, require the Debtors to come to the Court every
15 time they wanted to engage in some type of new staking, that
16 would like money.

17 And, you know, Mr. Evans can maybe, or Ms. Okike
18 can speak more to the timing elements here. For example,
19 you know, you might have only a short period of time to
20 stake. I don't know if that's true or not. But in general,
21 we wanted to get the order entered, give the Debtors the
22 flexibility to do that under our guidance and oversight.

23 MS. OKIKE: Your Honor, this is Christine Okike on
24 behalf of the Debtors. Your Honor, we'll obviously work
25 very, very closely with the committee to provide additional

1 information on both our prepetition staked coins, as well
2 as, you know, post-petition anticipated staked coins.

3 And, you know, under the proposed order, which I
4 know we haven't gotten to, but we're not allowed to do this,
5 right, unless the committee signs off. But I agree with Mr.
6 Azman, like, that we want the authority now because this
7 does generate a significant amount of revenue for the
8 company over time. As I mentioned, within the last year, it
9 generated \$51 million, and we view this as a very low risk
10 way for the Debtors to generate, you know, passive income
11 while the platform is frozen, and we think this is the most
12 low risk way for us to do that.

13 And in the absence of having, you know, some means
14 to kind of generate income, we are continuing obviously to
15 incur administrative costs and so, that was the reason for
16 seeking the relief. We do believe it's low risk, but we're
17 willing to work closely with the committee to get them on
18 board. And if, you know, the committee objects to what we
19 propose to do, we'll be back in front of Your Honor seeking
20 approval.

21 THE COURT: And are you proposing any limits as to
22 how much of your holdings you can stake or anything like
23 that?

24 MS. OKIKE: Your Honor, we're not at the time.
25 But I can say historically, I can check on what we have

1 historically done in terms of the percentage that's current
2 staked. I don't have the chart in front of me, but we are
3 not proposing to of stake all the coins. It's a typical
4 percentage that we do in the normal ordinary course of
5 business.

6 THE COURT: All right. Any other parties want to
7 be heard as to this part of the motion?

8 MS. DAGNOLI: Sir, it's Lisa Dagnoli. I just am
9 curious if they benefit -- if we all benefit from the
10 staking, how does this help the customer in this situation
11 and who gets the money that's earned from the staking?

12 MS. OKIKE: So the staking rewards are paid in the
13 native currency and those coins would become property of the
14 estate, which we would distribute, you know, to customers in
15 connection with confirmation of a plan.

16 MS. DAGNOLI: So is this in the plan at this time?

17 MS. OKIKE: The plan on file provides, you know,
18 that a percentage of coin is going back to customers.
19 Staking is not addressed in the plan, but it provides a way
20 for us to accumulate additional coins, which would be
21 available for distribution to customers under the plan.
22 That being said, as we're kind of going to get to, we have
23 an active sale process ongoing. And so, the plan is not
24 definitive in terms of the direction that the Debtors are
25 moving, but this would be another source of recovery for

1 customers in the case.

2 THE COURT: If I can explain.

3 MS. DAGNOLI: Okay.

4 THE COURT: When we talk about a plan, Bankruptcy
5 Code calls for the filing of a proposed plan. It gets voted
6 on by creditors. If it's approved by the Court, it becomes
7 the terms under which there is a reorganization.

8 And usually, there are requirements as to how the
9 company's assets are distributed, and value is distributed.
10 Some kind of claims that priority under the Bankruptcy Code
11 for the costs of administering the estate, for example. But
12 in general, the idea is that the more value there is, the
13 better chance of recovery for the creditors.

14 So while I don't think that they're proposing to
15 allocate returns from staking to particular customers or
16 directly to customers; they'll go into the general pool of
17 assets. As a general matter, the bigger that pool is, the
18 better the chance is that customers and other creditors will
19 get higher recoveries.

20 MS. DAGNOLI: Okay. Thank you, sir, for
21 explaining that.

22 THE COURT: Does that make sense?

23 MS. LITTLE: This is Ginger Little. I'm sorry to
24 bother you all again.

25 What you just said, okay -- and I don't interpret

1 the law, I don't know the law, so it's difficult for me, as
2 well as it is I'm sure for everybody else because this has
3 been devastating for my family alone.

4 You're saying that if it's approved, then the
5 company's going to make more money, the more assets will be
6 there, but we still can't touch our money; is that correct?

7 THE COURT: When you say touch your money, this
8 part of the motion has nothing to do with whether you can
9 withdraw cash, right.

10 MS. LITTLE: Right.

11 THE COURT: But if you're talking about
12 cryptocurrency holdings, this doesn't affect that.

13 MS. LITTLE: It doesn't? So in other words, let's
14 just say I have one Ethereum, okay, and it's automatically
15 staked. So if they continue to keep it and continue to
16 build money on it, it's going to put that asset into the
17 company; it's not basically going to help the individual
18 holder that started at the beginning. Am I correct on that?

19 THE COURT: Ms. Okike, do you want to respond?

20 MS. OKIKE: Yes, Your Honor. So we're proposing
21 to stake various cryptocurrency and in connection with that,
22 there may be rewards, which is additional coin, that will
23 come into the estate. So if we staked one Ethereum and
24 Ethereum is the one we're waiting for in terms of the
25 protocols merging and we get, you know, two Ethereum back,

1 we're now holding three Ethereum, right?

2 So the company is taking the position that all of
3 the cryptocurrency -- Ethereum, Bitcoin, et cetera -- is
4 property of the estate, which we will distribute to
5 customers in connection with a plan of reorganization which
6 you and other customers will have the opportunity to vote on
7 and approve.

8 So through what we're proposing, it will increase
9 the overall pool of assets that are available for
10 distribution to creditors in the case.

11 THE COURT: Okay.

12 MS. LITTLE: So basically, it's building the
13 company back; it's not really doing anything for the
14 creditors.

15 THE COURT: Think of it as building the estate
16 back. In bankruptcy, everything of the company owns is part
17 of an estate and the bigger that estate is -- all the
18 creditors are basically claimants against the estate. The
19 bigger the estate is, the better the recoveries for the
20 claimants (sound drops).

21 MS. LITTLE: Okay, thank you.

22 THE COURT: Okay. All right, anybody else want to
23 be heard about the staking portion of the motion? All
24 right.

25 I don't pretend that I have a complete

1 understanding of what is involved here, but there are no
2 objections. And with the committee oversight, I'll approve
3 it.

4 MS. OKIKE: Thank you, Your Honor. Your Honor,
5 with that, I think the last motion is the bid procedures
6 motion. I'll turn it over to my partner, Mr. Marcus.

7 THE COURT: Okay.

8 MR. MARCUS: For the record, Your Honor,
9 Christopher Marcus from Kirkland & Ellis on behalf of the
10 company. Can you hear me okay, Your Honor?

11 THE COURT: Yes, I can.

12 MR. MARCUS: Your Honor, Item 14 on the agenda is
13 the bid procedures motion; that's at Docket 126.

14 The Debtors filed a revised proposed order, which
15 includes redlines of the order, the bidding procedures, form
16 of notice, and that's at Docket 210, and I'll be referring
17 to that, Your Honor.

18 Before we begin, I would ask that the two
19 declarations of Mr. Jared Dermont from Moelis; those are
20 filed at Dockets 161 and 216 be admitted into evidence. Mr.
21 Dermont is on the line and is available for cross-
22 examination should any party wish to do so.

23 THE COURT: All right. Are there any objections
24 to the admission of the declarations into evidence? Does
25 anyone wish to cross-examine the witness as to the

1 declarations? All right, the declarations are admitted.

2 (Declarations of Jared Dermont Entered Into
3 Evidence)

4 MR. MARCUS: Thank you, Your Honor. As Your Honor
5 is aware, we are pursuing multiple alternatives on a
6 parallel path. We filed a standalone plan on the first day
7 of the case, and that was both to generate momentum and to
8 provide an alternative against which to weigh bids that are
9 developed in the Moelis process.

10 These bid procedures are an important part of that
11 process to help develop the alternatives. As we've
12 mentioned numerous times, Mr. Sussberg at the outset of this
13 hearing again, and as noted in our motion, our goal here is
14 to maximize value regardless of what form the transaction
15 takes, and orderly bid procedures are an important tool in
16 the value maximization effort.

17 So I would submit that these procedures, as
18 revised at Docket 210, subject to a couple of additions that
19 I want to put on the record today, are necessary and
20 appropriate to govern our auction sale process and help
21 maximize value.

22 Your Honor, what I would propose to do is walk
23 through the revised order and bid procedures, point out a
24 couple of important changes that were made, and obviously
25 any questions that Your Honor may have, explain the

1 resolutions with two of the three objecting parties, and
2 then address the one remaining objection that was filed by
3 the Texas State Securities Board.

4 THE COURT: Okay.

5 MR. MARCUS: Does Your Honor have the redline
6 order and bid procedures handy?

7 THE COURT: I do not and I'm not sure I know what
8 the actual current one is, but why don't you just tell me
9 what the changes are.

10 MR. MARCUS: Okay. It is at Docket 210; that is
11 the most recent. And I don't know we submitted a hearing
12 binder, but if we did, it would be this. We only filed one
13 blackline. It's a blackline of the current version against
14 what was filed, together with the motion.

15 I'm happy to walk through and just guide Your
16 Honor through the changes to the order and the bid
17 procedures, unless you want me to wait a moment and try to
18 dig it out of the binder; whatever you'd prefer, Your Honor.

19 THE COURT: Just go ahead and proceed.

20 MR. MARCUS: Okay. So, Your Honor, I would first
21 turn in the order to -- we are at Page 5, which lists a
22 number of dates that we're asking the Court to set as part
23 of this process.

24 Your Honor, I'm aware of the concerns that you
25 raised in Hollander regarding establishing confirmation

1 dates as part of the sale process, as part of the sale
2 procedures. We've attempted to address those concerns by
3 prefacing the first two dates related to the disclosure
4 statement with the notion that the Debtors would have to
5 have filed the disclosure statement on or before August
6 12th, and we prefaced the last four dates relating to
7 confirmation with the notion that these dates are subject to
8 being modified by ultimately the disclosure statement order.

9 But, I mean, let me just be up front, Your Honor.
10 If you're still uncomfortable with confirmation related
11 dates being established pursuant to this order versus a
12 disclosure statement order -- and again, confirmation dates,
13 not sale and auction dates -- an alternative would be to
14 just move these dates out of the order and list them as
15 indicative dates in the bid procedures.

16 These are absolutely dates that we will do our
17 best to achieve and it's important that participants in the
18 process understand the timing, but I want to make sure that
19 Your Honor is comfortable with the dates in the order.

20 THE COURT: Does anybody else wish to be heard on
21 this?

22 MR. MARCUS: Your Honor, I'm sorry, I don't mean
23 to interrupt. I have about six or seven modifications to
24 the order and then a couple of things --

25 THE COURT: I think on the timing issue, does

1 anybody have any --

2 MR. MARCUS: Oh, okay. I'm sorry.

3 MR. AZMAN: Your Honor, it's Darren Azman for the
4 committee. We have no objection, and, in fact, we support
5 the timeline.

6 MS. RYAN: Your Honor, this is Abigail Ryan with
7 the Office of the Texas Attorney General represent the State
8 Securities Board. I got cut off from the hearing. I got
9 dropped from CourtCall. And so, as to timing, was the
10 question if we support the timing set out in the motion?

11 THE COURT: I know you do not think -- the
12 question is whether we should set target dates today for
13 plan confirmation. I don't mind setting dates that require
14 you to file a particular disclosure statement by a
15 particular time, but shouldn't we set the other dates if and
16 when we have a disclosure statement on file?

17 MR. MARCUS: We can do that, Your Honor. We can
18 do that and move the other dates to the order. Again, it's
19 important really for participants in the process and,
20 frankly, you know, our agreement with the creditors'
21 committee and folks who are interested in the outcome of the
22 case, to understand the timeline that we're seeking to keep
23 ourselves to.

24 I didn't want to get crosswise with confirmation
25 related dates in the procedures order.

1 THE COURT: I don't have a problem.

2 CLERK: Judge, I'm sorry. There is some problem
3 with the website in Court Solutions. It appears that people
4 are getting cut off. The person in the upper left corner is
5 getting cut off. And when they get cut off, they sign back
6 on and then the next person that moves to that spot gets cut
7 off. I'm not sure if it's a glitch in the system or
8 somebody's tampering with it, but I sent a message to the
9 clerk's office.

10 THE COURT: Is anybody experiencing a problem
11 where they're being cut off and signing back on?

12 MR. AZMAN: Your Honor, it's Darren Azman. It's
13 happened to me seven times during the hearing.

14 MS. RYAN: Yes, Your Honor. This is Abigail Ryan
15 with the State of Texas. My colleagues and I have all been
16 cut off at different times during the hearing as well.

17 MR. TABACHNIK: Your Honor, Douglas Tabachnik
18 here. I just now signed back on. It happened to me just a
19 moment ago. I think it has to do with the length of the
20 hearing and the Court Solution somehow cuts you off at some
21 point and I'm not sure why they do that.

22 THE COURT: Lorraine, if we all sign off and call
23 back in, will that work for Court Solutions?

24 CLERK: I don't know. I haven't heard from Court
25 Solutions, but I suppose we can try that.

1 MR. TABACHNIK: I'm thinking I just signed back
2 on, so I'm probably good for another five hours.

3 CLERK: But it's been doing it. I've watched the
4 dashboard move left as each person gets dropped. And it's
5 the person right to the right of you that gets dropped, so
6 Jena will be the next person to get dropped probably.

7 THE COURT: It's a four-hour time limit on Court
8 Solutions, right?

9 CLERK: Well, that was for the tape, I believe,
10 but the tape, we already changed that. I have a message out
11 to Mike, but I haven't heard from him yet.

12 THE COURT: I think Court Solutions has a time
13 where they start to drop you.

14 MR. DIETDERICH: This is Andy Dietderich. I think
15 that's correct, Your Honor. I was just dropped, and I just
16 dialed back in.

17 THE COURT: Why doesn't everybody who hasn't
18 already dialed back in just take a moment to do that, and
19 we'll wait five minutes to resume this hearing with another
20 apology for the delay, okay?

21 MR. MARCUS: Very good, Your Honor.

22 (Recess)

23 CLERK: Judge, the recording is started again.

24 THE COURT: All right. I hope everybody has
25 signed back in.

1 On this particular issue, let's just have the date
2 for the disclosure statement and then say that at the
3 disclosure statement hearing, the Court will set the
4 remaining dates. And you can go ahead and tell people in
5 your bidding procedures what you intend to propose and try
6 to live by with the cooperation of the committee and
7 endorsement of the committee and just say that the Court
8 won't officially rule on those dates until the disclosure
9 statement hearing. Will that serve your purpose?

10 MR. MARCUS: That would be fine, Judge. We can do
11 that.

12 THE COURT: Okay.

13 MR. MARCUS: Okay. Your Honor, the second change
14 to the bid procedures order that I wanted to point out is on
15 Page 6 of the order, Paragraph 14, there's a proviso at the
16 end. This provision had originally allowed the Debtors to
17 modify the bid procedures in their discretion. The proviso
18 now makes modifications of the bid procedures subject to the
19 consent of the committee, and if we don't get the
20 committee's consent, we would have to come back to Court.

21 There was a change that I discussed with the
22 committee this morning that I just wanted to add and make
23 sure that it's clear, sort of a corollary to the date issue
24 that we discussed earlier. So I would like it to say, any
25 modifications to the bid procedures, including the deadlines

1 in this order and that's because, for example, Paragraph 3
2 sets the final deadline to submit bids at August 26th.

3 But if we wanted to move those, if we wanted to
4 move that back a day or two just to accommodate -- you know,
5 if we thought it was in the best interest of the process, we
6 would be moving it in a way that was inconsistent with your
7 order and, obviously, Your Honor's order governs. So we
8 just wanted it to be clear that those deadlines can be moved
9 with committee consent as well.

10 THE COURT: Okay.

11 MR. MARCUS: Thank you, Your Honor. And that
12 change will appear in the revised order when we submit it,
13 taking into account Your Honor's first comment as well.

14 Your Honor, the third important change that we
15 wanted to point out, also on Page 6, Paragraph 15, deals
16 with how the Debtors can incur bid protections. Again, this
17 was originally set up to be in the Debtors' discretion. But
18 what we've agreed with the committee is up until seven days
19 prior to the auction, the Debtors will consult with the
20 committee about offering a breakup fee and expense
21 reimbursement to potential bidders. But we will also
22 provide notice to all interested parties, and all interested
23 parties will have three business days to object to the
24 incurrence of those bid protections. If nobody objects, the
25 Debtors are authorized to incur those bid protections, and

1 if someone objects, we'll be back in front of Your Honor to
2 discuss the bid protections that we want to offer.

3 THE COURT: I'm going to change your procedure in
4 that regard. I don't delegate that authority. I think it's
5 something I'm supposed to rule on, to tell you the truth.

6 MR. MARCUS: Okay.

7 THE COURT: So if you want to designate a stalking
8 horse and/or want to grant bid protections, I'll let you use
9 the (sound glitch) three-day period. You can make an
10 application to that effect on three days' notice. And just
11 like anything else, if there are no objections, I may go
12 ahead and enter it or I may have questions.

13 MR. MARCUS: Very good, Judge. We will make that
14 change when we submit the order.

15 Your Honor, on Page 9 of the revised bid
16 procedures order, there's a paragraph that we added to
17 accommodate the SEC; they didn't file an objection, just
18 some comments. And that paragraph is the same as was added
19 to the others, that there's no finding in this order under
20 the Federal Securities laws as to whether crypto tokens or
21 transactions or securities.

22 Your Honor, Paragraph 27 originally preserved the
23 creditors' committee's rights to object to the winning
24 bidder, the sale, the disclosure statement, the plan.
25 Obviously, nothing in this order is intended to impair

1 anybody's rights, and so, we had originally been fine giving
2 that to the creditors' committee.

3 We did resolve the objection that was filed by
4 Alameda in exchange for two changes, to additional changes
5 to the bid procedures and the bid procedures order. This is
6 the first of those two changes, Judge, where we're going to
7 change this from a reservation of rights just for the
8 committee to a reservation of rights for all parties in
9 interest.

10 Your Honor, on the last two sort of important
11 changes that we made are actually in the bid procedures
12 themselves, Page 6 of the blackline bid procedures.

13 First, you'll notice a number of times on Page 6
14 where we have made sure it was clear that bids received can
15 be in all different forms; they don't have to be an asset
16 sale. It can be in the form of a plan to be sponsored as
17 well. This was actually some language that was suggested in
18 the Emerald objection, which we thought was helpful in
19 clarifying, so we included it.

20 And then the second change that helps resolve the
21 Alameda objection is with respect to the bid deposit in the
22 middle of the page. The bid deposit is -- we're going to
23 make it -- sorry. We're going to change how we calculate
24 the amount of the bid deposit to be the greater of \$5
25 million or 10 percent of the non-coin-related value in cash.

1 And, again, we'll make that change before we submit it to
2 the Court.

3 Those were the major changes. There were a number
4 of grammatical clerical changes throughout. We added
5 committee consent rights throughout. Obviously, if Your
6 Honor has any other questions about any other changes, I'm
7 happy to address those. Otherwise, I would walk through the
8 resolution with Emerald and Alameda and then get to the one
9 remaining objection, which is the Texas SSB.

10 THE COURT: Okay. I have a couple of comments.
11 As a general matter, the order should make clear that any
12 bidder that feels that the procedures are unduly restrictive
13 or improper or any party in interest who feels that who
14 believes relief from them is warranted can apply to me for
15 such relief and not -- there were some complaints about
16 whether everything is too much in your discretion. Anybody
17 who thinks that the procedures as they are set up or the
18 process as set up as just not working or is being applied
19 improperly, they can always ask me for relief. All right?

20 MR. MARCUS: Okay.

21 THE COURT: And similarly, anybody who has a
22 complaint about the conduct of any auction can ask for a
23 ruling from me.

24 The proposed notice as that was going to be
25 published, I guess? It just talks about -- suggests that

1 there's going to be a 363 sale. It doesn't really seem to
2 quite alert people that the timing might be different if
3 there's a plan. You need to make sure that people are aware
4 of that.

5 MR. MARCUS: Will do, Judge. It actually starts
6 to talk about the sale confirmation schedule. But, you're
7 right, it just refers to the sale date, so we'll make that
8 clear.

9 THE COURT: And then on the timing, you're asking
10 for a bid deadline of August 26th, auction date of the 29th,
11 and a sale hearing on the 7th. That seems pretty
12 compressed. I know you've made some efforts in the past,
13 but (indiscernible) in August when people aren't necessarily
14 as available as they otherwise would be. So why that
15 particular schedule and tell me why you're comfortable with
16 moving things that quickly.

17 MR. MARCUS: Yeah. I think it's a balancing, Your
18 Honor, actually. Much of this schedule was a little bit
19 less compressed, but we've been working cooperatively with
20 the committee and actually the creditors want the process to
21 move even faster.

22 I think it's really just a function of making sure
23 Moelis believes that the timing of the process is sufficient
24 to develop the most value-maximizing alternatives possible.
25 And if we're going to go down the sale path at the end of

1 that process, we'll be able to move quickly to a 363
2 hearing, subject, of course, to Your Honor's views on
3 whether at that time we're moving too quickly. And if it's
4 through a plan, then we would have some additional time to
5 get the requisite plan documents on file.

6 Mr. Dermont filed a supplemental affidavit, and we
7 know from that that Moelis is comfortable with the timing,
8 that we've had a lot of interest in the process, and the
9 counterparties or the potential bidders who are involved in
10 the process seem to be ready, willing, and able to move on
11 that expedited timeline.

12 We've noted again and again that it's important to
13 move quickly through this case, not just with these initial
14 distributions, but to show customers we're doing everything
15 we can to get them recovery as quickly as possible.

16 And so, you know, based on all those factors, Your
17 Honor, we are comfortable with the timeline. It's
18 aggressive, there's no doubt about it, but we're ready to
19 lean in and try to do everything we can to hit these dates.

20 MR. AZMAN: Your Honor, it's Darren Azman for the
21 committee. Would you like to hear our view on the timeline?

22 THE COURT: Yes, please.

23 MR. AZMAN: Look, ordinarily as committee counsel,
24 we'd be pounding the table and asking for more time, right?
25 That's what we do in 95 percent of the cases, we want more

1 time for the sale process because we think more time
2 maximizes value, but we've got two issues here.

3 One is the sale or transaction whatever occurs,
4 whether it's a plan or a sale, is ultimately going to drive
5 the timing for distributions in one way or another. And so,
6 the longer this sale process takes, the longer customers and
7 creditors are waiting to receive a distribution of what a
8 lot of them believe is theirs. It may not be the case, but
9 that's what they believe.

10 The second issue is the longer the sale process
11 takes, the longer this case takes and the more expensive
12 this case is and the less there will be at the end of this
13 case to distribute to creditors.

14 So we've gotten very comfortable, we've had a lot
15 of conversations with the Debtors' investment banker,
16 Moelis. We've, you know, communicated with our own
17 financial advisor, FTI, and we've also had direct
18 conversations with several of the bidders. And we are
19 comfortable both with the process that has transpired to
20 date and with the idea that there is a limited pool of
21 interested buyers for this asset.

22 There are several bidders that have submitted
23 bids, and I expect it to be a robust auction. But the
24 reality is that this is a complicated asset, just
25 cryptocurrency in general, and we don't believe that more

1 time is necessarily going to yield more value; in fact, it
2 could yield less value. You already heard from one bidder
3 today, Mr. Dietderich, who's representing FTX, that they
4 want less time.

5 And so, we think the Debtors struck the
6 appropriate balance in reaching this timeline and we support
7 it.

8 MS. RYAN: Your Honor, if I may. This is Abigail
9 Ryan on behalf of the State Securities Board.

10 The timeline actually is the issue raised in our
11 objection. And if you would like to hear my argument on it
12 now, I'm happy to do so. If you're preferring me to wait
13 until Debtors counsel is finished, I'm fine with that too,
14 Your Honor.

15 THE COURT: We'll hear your position now. But,
16 you know, I just read your position. You don't need to
17 repeat what you already said. (Indiscernible) it seems to
18 me that what you're saying is that we should wait until all
19 regulatory issues and lots of other things are figured out.
20 Doesn't that delay, basically destroy the value of what
21 we're trying to sell?

22 MS. RYAN: Well, I wouldn't say we need to wait
23 until all regulatory issues are figured out. I think
24 regulatory issues are a thing that are going to have to be
25 dealt with throughout the bankruptcy. And if it's sold,

1 we'll have to properly take care of that in any sale order.

2 The real issue is the lack of information that
3 anyone other than the UCC, the Debtor, or the bidders who
4 signed confidentiality agreements have. There are no
5 schedules or statement of affairs filed. That's extended
6 until August 18th with the Debtors mail, they'll ask for an
7 extra extension.

8 And we aren't going to have a 341 meeting until
9 after the auction, but the day before the sale hearing, and
10 the 341 meeting of creditors is supposed to give creditors
11 and parties in interest an opportunity to question a
12 representative of the Debtor. And here, that's not really a
13 meaningful opportunity.

14 The timeline really hurts other creditors and
15 parties in interest in that we have no idea what assets the
16 Debtor claims to have, what debts they claim to have, what
17 other creditors other than the customer creditors are out
18 there. And I believe that information should be obtained
19 before a sale is approved because once a sale of assets is
20 approved, those assets are out of the jurisdiction of the
21 Court because they're not part of the bankruptcy anymore.

22 THE COURT: Let me ask you, what is the current
23 deadline for the filing of schedules?

24 MS. RYAN: August 18th, Your Honor.

25 THE COURT: So they'll be on file long before we

1 have a sale hearing.

2 MS. RYAN: They'll be on file 13 days before the
3 objection deadline, Your Honor, and the objection deadline
4 for the sale, it's a one-day deadline looking at the
5 timeline that was put up this morning. The auction is held
6 on the 29th, August 30th is the 341 meeting, August 31st is
7 the sale objection deadline, and then a week later,
8 September 7th, is the sale hearing.

9 I say that no meaningful objection could be
10 written in that short of a time period, Your Honor. It's
11 basically one day and it's the one day that the 341 meeting
12 would be held.

13 And so, with the lack of information and the
14 constrained timeline, I don't think that this balances a,
15 you know, fair and open process with maximizing the value of
16 the Debtors' estate. We have to do both in this process.

17 And I'm not saying put this off for months and
18 months, absolutely not. But let's give creditors a little
19 more time in here to review schedules and statement of
20 affairs, so long as there's not another extension of those
21 requested, and have a meaningful opportunity to appear at a
22 341 meeting and have a meaningful opportunity to write a
23 decent objection to any sale motion that might come up.

24 This is a difficult topic, cryptocurrency, and the
25 exchange, and I'm sure any sale motion and deal that's

1 presented to the Court will be equally as complex and folks
2 are going need more than one day to understand it and figure
3 out if they want to object to it.

4 THE COURT: Well, to the extent that you think
5 that the 341 meeting should be held first. I mean, the
6 committee that's representing creditors thinks the opposite.
7 They don't think creditors will need that more time; if
8 anything, they want to rush.

9 MS. RYAN: They do, Your Honor, and we disagree
10 with them on that point. Right now as I understand it, and
11 I could be wrong, the committee is made up of some
12 consumers. We don't know what other creditors are out there
13 that might want to have things slow down. I think the first
14 Town Hall meeting for the UCC is going to be next week, I
15 believe Mr. Azman said earlier.

16 And so really getting a feel for what all the
17 creditors want, I don't know that's been done yet.

18 MR. AZMAN: Your Honor, it's Darren Azman for the
19 committee. I appreciate the comments by Ms. Ryan, who we've
20 had the opportunity to work with in a number of other cases
21 and we've, you know, worked with them successfully in those
22 other cases.

23 I think what I'm failing to understand here is
24 what is it in the schedules or that happens at a 341 meeting
25 that could possibly inform whether a creditor or another

1 parties in interest is going to object to the sale, right?
2 The goal of the sale process is trying to get as much money
3 or crypto, whatever the form of consider is going to be, for
4 the assets of this company in whatever form the buyers want
5 to propose a transaction structure, and I'm not sure I'm
6 following.

7 You know, we're not talking about confirming a
8 plan here; we're talking about the Debtor accepting whatever
9 they believe to be, with our consultation of course, is the
10 highest and best bid for the assets that the Debtor has.
11 And I'm not sure I understand what it is that, you know,
12 could be found in schedules that would alter somebody's
13 opinion of whether that's the best bid or not.

14 MS. RYAN: If I may respond, Your Honor. Again,
15 this is Abigail Ryan for the State Securities Board in
16 Texas.

17 It would actually give us a lot of information
18 because right now, other than the Debtor and the bidders who
19 signed confidentiality agreements and the UCC, nobody knows
20 what assets are being sold. We have no idea what the Debtor
21 owns, purports to own, what liabilities are out there, what
22 other creditors are out there. We have zero information.

23 All the information we have on the bidding process
24 or potential sale is what we have heard from Debtors counsel
25 and now UCC's counsel. I think to be able to value an asset

1 properly and to know how to properly object to the sale, if
2 an objection is needed, creditors need information about
3 what is being sold, and we don't have that.

4 And when we do finally get the sale motion,
5 there's a one-day turnaround to object to it. I
6 respectfully say that is not enough time for a meaningful,
7 open, and fair process to take place in this bankruptcy,
8 Your Honor.

9 THE COURT: Okay. The schedules will be on file
10 long before we have a sale hearing, so I'm not convinced by
11 that, and I'm not convinced they're really going to make
12 that much of a difference in evaluating sale options.

13 As to the objections, if you're proposing a sale
14 hearing of September 6th, I don't usually like to make
15 objection deadlines on a holiday weekend, but we can allow
16 objections up until September 5th.

17 MR. MARCUS: I'm just looking for the objection
18 deadline paragraph in the procedures. Give me one second,
19 Your Honor.

20 MR. GRAFF: Your Honor, it's Steven Graff on
21 behalf of the shareholders of the Canadian parent. I might
22 just add that I would support the submissions of Ms. Ryan
23 and I expressed the concern, Your Honor, that you too had
24 voiced, being that August is a month in which many of the
25 participants in this industry and many others are on holiday

1 and it seems like an abridged timeframe.

2 I respect the concern over costs occurring. I
3 respect that counsel for the committee and counsel for the
4 company believe that they can lean in and get this done and
5 that there is probably a small pool of participant buyers.
6 But just certainly from my 32 years of experience of sale
7 processes, though none have been specifically in the crypto
8 space, this seems like an incredibly abbreviated timeframe.

9 That's all. Thank you, Your Honor.

10 MR. MARCUS: Your Honor, this is Chris Marcus.

11 Let me respond to all that with a couple of things.

12 First of all, there is a sale objection deadline.
13 Yes, that's on August 31st, but objections related to the
14 conduct, manner, results of the auction have some additional
15 time already under the revised sale order deadline.

16 As Your Honor yourself noted, as Mr. Azman said as
17 well, I can't imagine what's in the schedules, the
18 statements, and at the 341 meeting that's going to be in any
19 way correlated to the sale, and I don't think they are.
20 There are numerous cases in this district that have approved
21 bid procedures and established dates prior to the Debtor
22 filings its schedules and SOFAs, including Garrett Motion,
23 Barney's, Hollander, Nine West, Runway Holdings. So I don't
24 think those two things are correlated in a way that requires
25 one to follow the other.

1 I would also say, you know, the SSB's argument and
2 several times said, for example, we don't know what other
3 creditors out there might object to, we don't know who's
4 going to object to the bid procedures.

5 Well, the largest creditor in the case, probably
6 the largest creditor in the case, which is Alameda, believes
7 we should be moving fast. Perhaps we should be, if we
8 receive a bid that is an offer that we can't refuse, we
9 should be abandoning the bid procedures altogether. And the
10 creditors' committee and the member of the creditors'
11 committee are all consumers in this case, obviously want the
12 case moving faster.

13 So this was a motion that was put out on broad
14 notice and those hypothetical other creditors are not
15 present. And the relief that the objection seeks -- and I'm
16 looking at Paragraph 23 of the SSB's objection, which says,
17 "The breakneck pace sought by the Debtors is simply too
18 aggressive and would eviscerate any meaningful opportunity
19 for parties in interest in to review the schedules."

20 Well, again, you know, I don't see the
21 correlation. But what they're asking for is none of the
22 dates should be set until the schedules are filed and the
23 341 meeting occurs. And I'm not sure why we would take our
24 foot off the gas and not at least continue with the process.
25 Everybody's rights with respect to the ultimate relief, the

1 ultimate transaction, are preserved. If a creditor believes
2 that they haven't had ample opportunity, they can object to
3 the ultimate transaction. By the way, it may not be a sale.
4 It may be a plan, in which case, folks will have an
5 additional two months, so we just don't know yet.

6 And what the SSB is asking for is to shut down our
7 current sale process and wait until we see the schedules and
8 statements because somebody might have an objection later
9 on. I agree that there's got to be some sort of balancing
10 here. I mentioned that before in connection with the
11 discussion of why we thought that this was an appropriate
12 time. That is not a balancing; that's just a shutdown
13 without regard to whether -- without regard, one, to what
14 the creditors who have spoken up have already said and, two,
15 without regard to the potential loss of value, which is what
16 is set forth in Mr. Dermont's affidavit.

17 MR. DIETDERICH: Your Honor, Andy Dietderich for
18 Alameda, if I can be heard just very briefly.

19 THE COURT: Okay.

20 MR. DIETDERICH: I'd like to just confirm, because
21 it's been mentioned before by others, our support for the
22 timetable. We support that with a bidder hat on and we
23 support that with a creditor hat on and we are, indeed, the
24 largest creditor in the case and so, we fully support the
25 timetable.

1 And I think Mr. Marcus put his finger on an
2 important distinction, which is, you know, a sale here in
3 similar situations has been done very, very quickly. It may
4 be that a plan, if it's ends up in a plan, will have more
5 process built into it because it's a plan. But I think
6 Alameda thinks it's important, you know, that at least the
7 sale alternative be able to be done as quickly as possible.

8 We also, Your Honor, have one other reason not to
9 wait too long, which is the price of crypto is highly
10 volatile and these issues, these kind of issues about claim
11 versus property right, who gets what, have one level of
12 significance, you know, if crypto was more or less stable.
13 If crypto goes up substantially, the case becomes, you know,
14 very complicated very quickly, so we think speed is
15 important for that reason as well.

16 MS. RYAN: Your Honor, this is --

17 WOMAN: I'm sorry, go ahead.

18 MS. RYAN: Thank you. This is Mrs. Ryan with the
19 Texas Attorney General's Office on behalf of the State
20 Securities Board.

21 I'm not suggesting that the -- I didn't object
22 first to the actual procedures set out in the bidding
23 procedures. It's merely the abbreviated timeline that gives
24 me heartburn.

25 I do believe the schedules and statement of

1 financial affairs are important because it will set out what
2 assets the Debtor has and the value. And the only people
3 that know that right now are the potential bidders, the UCC,
4 and Debtors' counsel. Nobody else in this case even knows
5 what's for sale. And then to know whether the sale is
6 proper, we need to know how the assets are being valued and
7 so, this is why the schedules and statement of affairs are
8 important.

9 Secondarily, from a regulatory standpoint, we need
10 to know what regulations or certifications or things the
11 Debtor believes they have. We don't know what they believe
12 they have. We know what we believe they don't have.

13 Finally, the one timeline that really is giving me
14 heartburn here is the sale objection deadline. And I would
15 not anticipate, you know, my client objecting to the conduct
16 at the auction or anything like that, but there may be a
17 term in the sales order or the processes that they would
18 object to and a one-day turnaround to do that is just too
19 short.

20 And so, we don't always get what we want, and I
21 know I'm not going to get what I asked for in our pleadings
22 and that's okay. But I do ask for an extension of the sale
23 objections deadline, Your Honor, to give people enough time
24 to review and digest exactly what's being sold, since we
25 don't know, and the processes that'll be taken to sell it.

1 THE COURT: Does anyone else wish to be heard?

2 MR. GRAFF: Your Honor, it's Steven Graff, just
3 three quick reply comments.

4 Number one, I appreciate the comment and crypto
5 value that I believe counsel for Alameda made with respect
6 to the value of crypto, but that cuts both ways, so I don't
7 consider that to be a relevant factor.

8 Number two, I question whether Alameda can
9 objectively stand before you today or sit before you today,
10 as the case may be, and objectively make comments from its
11 position as a bidder on what the timeline ought to be.

12 And, number three, though Mr. Marcus identified
13 the fact that he has engaged in expeditated sale processes
14 comparably abridged to the one proposed here, I challenge
15 him to identify any case where he has done so during the
16 month of August.

17 That is it. Thank you, Your Honor.

18 MS. LITTLE: Your Honor, this is Ginger Little
19 again. I look at it as, you know, I'm one of the small fish
20 in the pond, so to speak, in this situation, but it's not a
21 small fish to me.

22 I understand how auctions go, but usually, you
23 have a right to know what's going to be auctioned and what
24 they're looking at for that actual value. And as for
25 crypto, I heard a statement -- I don't know who said it, but

1 they said that, you know, crypto is down right now and
2 crypto could go up and crypto can go down. But I remember
3 crypto back when it first started, and I remember it sold
4 for a nickel. And now -- and I've seen it go from that to
5 85,000 -- not 85, excuse me -- I think it was, like, 68 or
6 something like that.

7 So crypto is -- you know, it does fluctuate from
8 one to another. And I know that in an auction like this,
9 you can -- they can buy, just say, a Bitcoin for pennies on
10 the dollar and that very same crypto knowing that it's going
11 to flip, and it will flip, and it will go back up and it
12 will go up substantially more than it was when it fell this
13 time because we're not always going to be in a recession.

14 So what they're doing -- and this is my eyes; I
15 don't know if other people are looking at this way or not.
16 But if I'm selling something or they're going to sell
17 something of mine that is worth, they say, 10,000 now when I
18 know the value -- and the only reason you put money is to
19 make money in, not to lose money -- and you see it go up
20 that high later on. And the person with the money, the
21 whales as they call them, that have the money to buy it at
22 the little part to push the little guy out and then bring it
23 back up and then they make all the fortune is the way it's
24 always been and it's almost like it's staggered to be that
25 way in this situation, and I do have concerns about that.

1 And I'm sorry for taking this much time.

2 THE COURT: Okay. Anybody else? All right. I'm
3 not concerned about the filing dates in relation to the
4 schedules. The schedules will be on file long before any
5 sale hearing. To the extent creditors who are watching the
6 sale process ought to have an understanding of how good or
7 bad the bids are, they will certainly have the schedules
8 long before the bids are in and announced long before a
9 specific sale is proposed. That, to me, is not a reason to
10 wait at all.

11 And I am very concerned that the idea of waiting
12 to make people more comfortable or to give people more time
13 to ask questions runs counter to what needs to be our main
14 goal here, which is to maximize value.

15 This is an unusual business. It's not, I hope,
16 going to be a situation where the only thing that's being
17 sold is the Bitcoin assets that are held. Maybe it can be
18 sold as an ongoing business, as an ongoing brokerage, maybe
19 there's something that can be salvaged. The longer it sits
20 idle, the less likely, it seems to me, that that could
21 possibly happen, and all that is very good reason to me to
22 proceed as quickly as the circumstances reasonably allow.

23 It is a very compressed schedule, but there has
24 apparently been quite a bit of marketing before the
25 bankruptcy and also underway before we get to today, so it's

1 not like everything is starting today and nothing has
2 happened before today.

3 And it's also the case that if circumstances turn
4 out to be such that we get closer to the date and that
5 schedule is too compressed, well, it's not like it's written
6 in stone and can't be changed. If it needs to be adjusted
7 at that time and there's very good reasons to adjust at that
8 time, it can be adjusted.

9 It is a very short objection deadline, and I will
10 extend that and potentially inconvenience people if there
11 are objections. But if we have a September -- instead of
12 the 7th, can we make it the 8th, and then have the 6th as
13 the objection deadline; would that work for you, counsel?
14 That way, we won't have a holiday as an objection deadline.

15 MR. MARCUS: That's certainly okay with me. We
16 can move that hearing date back by a day if that's Your
17 Honor's preference.

18 THE COURT: All right. And I think otherwise I
19 will overrule the objections.

20 I do have one other question. I didn't see any
21 procedures for identifying possible cure payments to
22 contract counterparties to the extent that you are talking
23 about selling any contracts or assuming and assignment
24 contracts. That possibility is mentioned in your motion,
25 but usually, that's accompanied by procedures where you

1 propose what the cure payments are and people can object if
2 they think they pose something different, et cetera. I
3 didn't see any of that.

4 MR. MARCUS: Your Honor, I don't know that we have
5 contracts and leases that are going to be assumed and
6 assigned. But we can come up with procedures to make sure
7 that, to the extent that there are assumptions and
8 assignments of contracts and/or leases, that the
9 counterparties will receive appropriate notice and an
10 opportunity to be heard with respect to both adequate
11 assurance, as well as cure amounts.

12 THE COURT: All right. I'm not telling you you
13 have to make provision for it. I'm just saying that if
14 that's going to be an issue, it would be normal to make some
15 provision for some for it if you want to consider (sound
16 drops).

17 Anybody else have anything else they want to be
18 heard on with respect to the bidding procedures? All right.

19 WOMAN 1: Your Honor --

20 THE COURT: So if you modify the order
21 accordingly. Yes?

22 WOMAN 1: I'm just curious since the creditor,
23 like, do we get to actually see the bids or is that
24 something that's published in Stretto and the case summary?

25 THE COURT: The bids will be confidential. You'll

1 get to see the (sound drops) outcome of the hearing, at
2 which time the Debtors will announce why they picked a
3 particular bidder, as well as such information as is
4 appropriate as to what the alternatives were.

5 WOMAN 1: Okay. Thank you, sir.

6 THE COURT: Anything else?

7 MR. DADSON: Your Honor, Cordearo Dadson, one of
8 the consumers from Voyager. Will there ever be any ruling
9 concerning USDC because I was taught that it goes back to
10 the U.S. dollar though and this matter is considered
11 cryptocurrency. Will there be any future in the future of
12 the next hearing anything that goes to that regards of how
13 do we go about those that were primarily USDC exposed on the
14 platform?

15 THE COURT: Yeah. I'm not sure I fully heard the
16 question. Will there be a ruling on what exactly now?

17 MR. DADSON: On the matter of USDC. From what I
18 understand, a lot of the customers that were using the
19 platform were exposed in that manner. And I understand in
20 these proceedings it's a cryptocurrency, but it was taught
21 that it was pegged to the U.S. dollar, so I just wanted to
22 know will there be any clarity for those going forward.

23 THE COURT: I don't know how to answer that
24 question. You know, as the judge, I basically rule on
25 motions when they are made.

1 Ms. Okike, do you have any comments in response to
2 that question?

3 MS. OKIKE: Yes, Your Honor. Christine Okike of
4 Kirkland & Ellis on behalf of the Debtors.

5 Your Honor, USDC is a type of cryptocurrency which
6 the Debtors are currently holding. And, you know, as we've
7 talked about, the Debtors' view is that the cryptocurrency
8 is property of the estate. Our job is to maximize that
9 value, which we're seeking to do, among other things,
10 through staking. And when we have, you know, a transaction
11 that we're moving forward with, there'll be further
12 information provided to customers in terms of what they can
13 expect to receive on account of claims in the case,
14 including, you know, claims for USDC.

15 THE COURT: All right. Is there any other
16 business for today? Okay. If not, then we are adjourned.
17 I'll look forward to seeing your revised orders.

18 MR. MARCUS: Thank you, Your Honor.

19 (Whereupon these proceedings were concluded at
20 3:38 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: August 8, 2022

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